IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 10 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

MERRILL LYNCH, PIERCE, FENNER & SMITH INC.,

Plaintiff,

v.

LESLIE TRAVERS,

Defendant.

No. 00CV0548B (E)

ENTERED ON DOCKET
DATE JUL 10 2000

NOTICE OF DISMISSAL

Plaintiff Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure hereby dismisses the above-referenced action against the Defendant Leslie Travers without prejudice

Respectfully submitted,

By: _____

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Of Counsel:

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FILED
JUL 7 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BARBARA STARR SCOTT and DWIGHT W. BIRDWELL, Plaintiffs,	
vs.	**Case No.: 99 CV 156(B) (formerly 99 CV 0161B (E))**
CHARLIE ADDINGTON, JOEL THOMPSON, BOB LEWANDOWSKI, MARK McCOLLOUGH, THE HOUSING AUTHORITY OF THE CHEROKEE NATION BOARD COMMISSIONERS in their personal and Official Capacities Composed of SAM ED BUSH, STANLEY JOE CRITTENDEN, ALYENE HOGNER, NICK LAY, BILLY HEATH (as successor to NICK LAY), and MELVINA SHOTPOUCH and JOHN DOE(S), Defendants not yet known, Defendants.	**Senior Judge Thomas R. Brett**

ENTERED ON DOCKET
DATE JUL 10 2000

ORDER DISMISSING ALL DEFENDANTS & CLAIMS

Upon the Unopposed Application of Plaintiffs, Barbara Starr Scott and Dwight Birdwell, for an order dismissing Defendant The Housing Authority of the Cherokee Nation, its commissioners (including Sam Ed Bush, Stanley Joe Crittenden, Alyene Hogner, Nick Lay, Billy Heath as successor to Nick Lay, and Melvina Shotpouch in their individual and personal capacities) and employees (including Defendants Charlie Addington, Joel Thompson and Bob Lewandowski)

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and Defendant Mark McCollough filed herein and for good cause shown, IT IS HEREBY ORDERED that the above-referenced Defendants are hereby dismissed with prejudice.

THOMAS R. BRETT
SENIOR UNITED STATES DISTRICT
COURT JUDGE

7-7-06

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\\SLP01\LEGAL\7490.1\PLEADINGS\ORDER TO DISMISS ALL.DOC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 10 2000

FRANK B. WILLIS, JR.,

Plaintiff,

vs.

PRISON HEALTH SERVICES,

Defendant.

No. 99-CV-406-H (E)

FILED
JUL 7 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

On May 25, 1999, Plaintiff, appearing *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (Docket #1), naming as defendant "Tulsa County (medical)." Pursuant to the Court's July 14, 1999 Order, Plaintiff was granted leave to proceed *in forma pauperis*. The Court also directed Plaintiff to file an amended complaint to cure certain deficiencies in his pleadings. Thereafter, on July 29, 1999, Petitioner filed his Amended Complaint (Docket #5), naming one defendant, Prison Health Services. For the reasons discussed below, the Court finds Plaintiff's amended complaint should be dismissed without prejudice for failure to state a claim upon which relief may be granted.

ANALYSIS

A. Standards

As stated above, Plaintiff has been granted leave to proceed *in forma pauperis*. In cases where the plaintiff is proceeding *in forma pauperis*, § 1915(e) applies and provides as follows:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court **shall** dismiss the [*in forma pauperis*] case at any

> time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted . . . .

28 U.S.C. § 1915(e)(2)(B)(ii) (emphasis added).

A court should dismiss a constitutional civil rights claim only if it appears beyond doubt that plaintiff could prove no set of facts in support of his claim which would entitle him to relief. Meade v. Grubbs, 841 F.2d 1512, 1526 (10th Cir. 1988) (citing Owens v. Rush, 654 F.2d 1370, 1378-79 (10th Cir. 1981)). For purposes of reviewing a complaint for failure to state a claim, all allegations in the complaint must be presumed true and construed in a light most favorable to plaintiff. Id.; Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991). Furthermore, pro se complaints are held to less stringent standards than pleadings drafted by lawyers and the court must construe them liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972). Nevertheless, the court should not assume the role of advocate, and should dismiss claims which are supported only by vague and conclusory allegations. Hall, 935 F.2d at 1110. See also Fed. R. Civ. P. 12(b)(6) and Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (setting forth standards for evaluating the sufficiency of a claim).[1]

B. Plaintiff's claims

In his amended complaint, Plaintiff alleges that his constitutional rights have been violated by Defendant as follows:

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[1]When ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, the Court must accept all well-pled factual allegations in the complaint as true, and the Court must view all inferences that can be drawn from those well-pled facts in the light most favorable to plaintiff. Viewing the allegations in the complaint through this lens, the Court may grant a Rule 12(b)(6) motion only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley, 355 U.S. at 45-46. The Court finds that this same standard should be applied when deciding whether to dismiss a claim *sua sponte* under either 28 U.S.C. § 1915(e)(2)(B)(ii) or § 1915A(b)(1).

Count I: Lack of medical attention to broken right hand [by] Prison Health Services medical staff.

Count II: "Neglegent" (sic) [by] Prison Health Services medical staff.

Count III: Malpratice (sic) [by] Prison Health Services medical staff.

(#5 at 6). Plaintiff alleges that on March 16, 1999, Defendant Prison Health Services "refused to administer proper medical attention [] to broken right hand" while he was incarcerated at Tulsa County Jail. (#5 at 5).

The Court finds that, even if the allegations in Plaintiff's amended complaint are accepted as true, the amended complaint fails to state a claim upon which relief can be granted as to the named defendant. It is not clear from Plaintiff's pleadings whether he was being held at the Tulsa County Jail as a pretrial detainee or whether he was a convicted prisoner. However, the legal standard used to evaluate his claims is the same regardless of his status. While the conditions under which a convicted prisoner is held are subject to scrutiny under the Eighth Amendment, the conditions under which a pretrial detainee is confined are scrutinized under the Due Process Clauses of the Fifth and Fourteenth Amendments. See Bell v. Wolfish, 441 U.S. 520, 535 n. 16 (1979). "Although the Due Process clause governs a pretrial detainee's claim of unconstitutional conditions of confinement, the Eighth Amendment standard provides the benchmark for such claims." Craig v. Eberly, 164 F.3d 490, 495 (10th Cir .1998) (citation omitted). "The Eighth Amendment requires jail officials to provide humane conditions of confinement by ensuring inmates receive the basic necessities of adequate food, clothing, shelter, and medical care and by taking reasonable measures to guarantee the inmates' safety." Id. (quotation omitted). An inmate claiming that officials failed to provide humane conditions of confinement "must show that he is incarcerated under conditions posing a substantial risk of serious harm." Farmer v. Brennan, 511 U.S. 825, 834 (1994) (involving

allegations of failure to protect). He must also demonstrate that the officials had a "sufficiently culpable state of mind," that is, their acts or omission arose from "deliberate indifference to inmate health or safety." Id. "[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety." Id. at 837.

As to claims involving adequacy of medical care provided to prisoners, it is well established that "deliberate indifference to serious medical needs of prisoners" constitutes a violation of the Eight Amendment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). "However, 'a complaint that a physician has been negligent in diagnosing or treating a medical condition does not state a valid claim of medical mistreatment under the Eighth Amendment.' " Green v. Branson, 108 F.3d 1296, 1303 (10th Cir.1997) (quoting Estelle, 429 U.S. at 106). Furthermore, neither medical malpractice nor disagreement with medical judgment constitutes an Eighth Amendment violation. See id. Therefore, in order to prevail, a plaintiff must show a "deliberate refusal to provide medical attention, as opposed to a particular course of treatment." Id.

In the instant case, Plaintiff's allegations of negligence and malpractice by Defendant Prison Health Services are clearly insufficient to state a claim under 42 U.S.C. § 1983. Green, 108 F.3d at 1303. In addition, Plaintiff has not demonstrated, nor has he even alleged, that Defendant Prison Health Services acted with deliberate indifference in failing to provide "proper" medical attention.

Also, to the extent Plaintiff's claims are based on supervisory liability, the Court finds Plaintiff has failed to state a claim. In Woodward v. City of Worland, 977 F.2d 1392 (10th Cir.1992), the Tenth Circuit Court of Appeals concluded that, "the proper articulation of the test for supervisory liability under section 1983 is that set forth by the Third Circuit in Andrews v. City of Philadelphia, 895 F.2d 1469 (3d Cir.1990), where it was stated that supervisor liability requires

'allegations of personal direction or of actual knowledge and acquiescence.' " Woodward, 977 F.2d at 1400 (quoting Andrews, 895 F.2d at 1478). Under this standard, mere negligence is insufficient to establish supervisory liability. Id. at 1399. Plaintiff has failed to allege any facts demonstrating any link between Defendant Prison Health Services and the allegedly inadequate medical care he received while incarcerated at the Tulsa County Jail. As result, the Court concludes Plaintiff's amended complaint is subject to dismissal.

CONCLUSION

Plaintiff's conclusory allegations fail to state a claim upon which relief may be granted. Therefore, Plaintiff's amended complaint should be dismissed without prejudice to the filing of a second amended complaint. The Court will reopen this action should Plaintiff file a second amended complaint within twenty (20) days of the entry of this Order.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Plaintiff's amended complaint (Docket #5) is **dismissed without prejudice** to the filing of a second amended complaint.
2. The Court will reopen this action should Plaintiff file a second amended complaint within twenty (20) days of the entry of this Order.

IT IS SO ORDERED.

This 7TH day of July, 2000.

Sven Erik Holmes
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JONATHAN P. M. CRAIG,)
)
Plaintiff,)
)
vs.) No. 99-CV-356-H (M)
)
TULSA COUNTY ADULT)
DETENTION CENTER,)
)
Defendant.)

ENTERED ON DOCKET
DATE JUL 10 2000

FILED
JUL 7 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

On May 11, 1999, Plaintiff, appearing *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 (Docket #1), naming as defendant Tulsa County Adult Detention Center. Pursuant to the Court's May 17, 1999 Order, Plaintiff was granted leave to proceed *in forma pauperis*. As discussed below, the Court finds Plaintiff's complaint should be dismissed without prejudice for failure to state a claim upon which relief may be granted.

ANALYSIS

A. Standards

Plaintiff is a prisoner as that term is defined in § 1915A(c) (i.e., a person incarcerated for violations of the criminal law). The Defendant in this case is a subdivision of a governmental entity. The Court is, therefore, required to conduct an initial review of Plaintiff's complaint. See 28 U.S.C. § 1915A(a). During this review, the Court is required to "identify cognizable claims or dismiss the complaint, or any part of the complaint, if the complaint . . . is frivolous, malicious, or fails to state a claim upon which relief may be granted . . . ." 28 U.S.C. § 1915A(b)(1).

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Plaintiff is also proceeding *in forma pauperis*. In cases where the plaintiff is proceeding *in forma pauperis*, § 1915(e) provides as follows:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court **shall** dismiss the [*in forma pauperis*] case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted . . . .

28 U.S.C. § 1915(e)(2)(B)(ii) (emphasis added).

A court should dismiss a constitutional civil rights claim only if it appears beyond doubt that plaintiff could prove no set of facts in support of his claim which would entitle him to relief. Meade v. Grubbs, 841 F.2d 1512, 1526 (10th Cir. 1988) (citing Owens v. Rush, 654 F.2d 1370, 1378-79 (10th Cir. 1981)). For purposes of reviewing a complaint for failure to state a claim, all allegations in the complaint must be presumed true and construed in a light most favorable to plaintiff. Id.; Hall v. Bellmon, 935 F.2d 1106, 1109 (10th Cir. 1991). Furthermore, pro se complaints are held to less stringent standards than pleadings drafted by lawyers and the court must construe them liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972). Nevertheless, the court should not assume the role of advocate, and should dismiss claims which are supported only by vague and conclusory allegations. Hall, 935 F.2d at 1110. See also Fed. R. Civ. P. 12(b)(6) and Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (setting forth standards for evaluating the sufficiency of a claim).[1]

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[1]When ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, the Court must accept all well-pled factual allegations in the complaint as true, and the Court must view all inferences that can be drawn from those well-pled facts in the light most favorable to plaintiff. Viewing the allegations in the complaint through this lens, the Court may grant a Rule 12(b)(6) motion only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley, 355 U.S. at 45-46. The Court finds that this same standard should be applied when deciding whether to dismiss a claim *sua sponte* under either 28 U.S.C. § 1915(e)(2)(B)(ii) or § 1915A(b)(1).

B. Plaintiff's claims

In his complaint, Plaintiff alleges that his constitutional rights have been violated by Defendant Tulsa County Adult Detention Center as follows:

Count I: Not proper medical attention, asking to see Dr. all time of the day. Not recieving (sic) the proper medication either.

Count II: (Jail in error) Failure to recieve (sic) medical reports & records from St. Francis hospital.

Count III: (Jail in error) (Jail in error)

(#1 at 6). Plaintiff claims he suffers from endocarditis and a lesion in the brain. See #1 at 5.

The Court finds that, even if the allegations in Plaintiff's complaint are accepted as true, the complaint fails to state a claim upon which relief can be granted as to the only named defendant, Tulsa County Adult Detention Center. Numerous courts have held that governmental sub-units or departments are not separate suable entities and are not proper defendants in a § 1983 action. Martinez v. Winner, 771 F.2d 424, 444 (10th Cir. 1985), *vacated on other grounds*, Tyus v. Martinez, 475 U.S. 1138 (1986); Johnson v. City of Erie, 834 F. Supp. 873, 878 (W.D. Pa. 1993); PBA Local No. 38 v. Woodbridge Police Dept., 832 F. Supp. 808, 826 (D. N.J. 1993). In addition, the Court finds Plaintiff's allegations of constitutional deprivation are conclusory. Therefore, absent amendment, Plaintiff's conclusory allegations are insufficient to state a claim for relief against Defendant Tulsa County Adult Detention Center and his complaint should be dismissed without prejudice pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii).

CONCLUSION

Plaintiff's conclusory allegations fail to state a claim upon which relief may be granted against the only named defendant, Tulsa County Adult Detention Center. Therefore, Plaintiff's complaint should be dismissed without prejudice to the filing of an amended complaint. The Court will reopen this action should Plaintiff file an amended complaint within twenty (20) days of the entry of this Order.

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Plaintiff's complaint (Docket #1) is **dismissed without prejudice** to the filing of an amended complaint.

4. The Court will reopen this action should Plaintiff file an amended complaint within twenty (20) days of the entry of this Order.

IT IS SO ORDERED.

This 7TH day of July, 2000.

Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

THOMAS W. KING,)
)
Plaintiff,)
)
v.) 99-CV-721-H(J)
)
HILTI, INC.,)
)
Defendant.)

ENTERED ON DOCKET
DATE JUL 10 2000

FILED
JUL 7 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter comes before the Court upon Defendant's motion for summary judgment on Plaintiff's claims and the parties' cross-motions for summary judgment on Defendant's counter-claim. The Court duly considered the issues and rendered a decision in accordance with the order filed on July 3, 2000.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Defendant and against Plaintiff on all of Plaintiff's claims. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Defendant on its counter-claim in the amount of $14,400.

IT IS SO ORDERED.

This 7TH day of July, 2000.

Sven Erik Holmes
United States District Judge

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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JEFF GRAEFE,	)	ENTERED ON DOCKET
	)	DATE JUL 10 2000
Plaintiff,	)	
	)	
v.	)	**Case No. 99-CV-0989-H(M)**
	)	
DELOITTE & TOUCHE, LLC, and JOHN GIMPERT	)	**FILED**
	)	JUL 10 2000
Defendants.	)	Phil Lombardi, Clerk U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE OF PLAINTIFF'S COMPLAINT AND CLAIMS AGAINST DEFENDANT, DELOITTE & TOUCHE LLP AND JOHN GIMPERT

Plaintiff, Jeff Graefe and Defendants Deloitte & Touche LLP and John Gimpert's Joint Stipulation of Dismissal with Prejudice of Plaintiff's Complaint against Defendants Deloitte & Touche LLP and John Gimpert is approved.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Complaint, and all claims alleged therein, against Defendants Deloitte & Touche LLP and John Gimpert are hereby dismissed with prejudice to refiling, with each party to hear their own respective attorney fees and costs.

DONE this 10TH day of July, 2000.

UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

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ATTORNEYS FOR DEFENDANTS,
DELOITTE & TOUCHE AND JOHN GIMPERT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 10 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ALVEN MILLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 00-CV-0293-K (E)**
	)	
RUSSELECTRIC, INC.,	)	ENTERED ON DOCKET
	)	DATE JUL 10 2000
Defendant.	)	

REPORT AND RECOMMENDATION

Defendant Russelectric, Inc. ("Russelectric") has filed a motion to dismiss for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6). The Court has referred the motion to the undersigned for Report and Recommendation. For the reasons stated herein, the undersigned recommends that the motion to dismiss [Docket #6] be **GRANTED.**

Background

On June 27, 1997, Plaintiff Alven Miller ("Miller"), while employed by Defendant Russelectric, was injured in a non-work related car accident. Approximately one month following the accident, Miller suffered a single seizure. The seizure did not impair Miller's ability to perform any of his job duties.[1] However, approximately one year following the seizure, Miller became unable to drive.[2] As a result of Miller's inability to drive, his work attendance at the Broken Arrow facility suffered.

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1 Miller does not allege that he is unable to work. However, if an individual alleges that he is substantially limited in the major life activity of working, the individual must be precluded from a "broad class of jobs." See Sutton v. United Air Lines, Inc., 527 U.S. 471, 119 S. Ct. 2139, 2151 (1999).

2 From August 1998 to September 1999, Miller was unable to drive an automobile.

In October 1998, Miller informed Russelectric of his accident and difficulty arranging transportation to the facility. Miller requested at-home accommodation[3] as an alternative to working at the facility. In January 1999, Russelectric, although denying Miller's request for at-home accommodation, offered to pay him hourly wages for the time he worked at the facility. Consequently, Miller was temporarily converted from a salaried employee to an hourly employee. Miller received hourly compensation based on the number of hours that he worked at the facility from January 1999 until September 1999. In September 1999, Miller became able to drive and returned to work full-time at the facility.

On April 11, 2000, Miller filed a complaint alleging that Russelectric discriminated against him in violation of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. ("ADA"). Specifically, Miller alleges that Russelectric temporarily demoted him to an hourly employee and refused to make reasonable accommodation for his disability. In response to the discrimination claim, Russelectric moved to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) on the grounds that Miller cannot support his claim that he has an impairment under the ADA, that driving is not a "major life activity," and that Russelectric did not discriminate against him on account of his disability.

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[3] The specifics of the request for accommodation are disputed. Miller alleges that he requested at-home accommodation only for the days he could not arrange transportation to work. However, Russelectric alleges that Miller requested to have permanent at-home accommodation. Resolution of this issue would be necessary to determine whether the request for accommodation and the accommodation provided were reasonable. However, because the undersigned recommends a finding that Miller does not have a disability, an inquiry into the reasonableness of the accommodation is not necessary.

Standard of Review

A motion to dismiss is properly granted when it appears beyond doubt that a plaintiff could prove no set of facts entitling him to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02, 2 L. Ed. 80 (1957); Calderon v. Kansas Dept. of Social & Rehabilitative Services, 181 F.3d 1180, 1183 (10th Cir. 1999). For purposes of making this determination, a court must accept "all well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff." Calderon, 181 F.3d at 1183; see also Dill v. City of Edmond, 155 F.3d 1193, 1201 (10th Cir. 1998).[4]

Discussion

The ADA prohibits discrimination "against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharges of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). To establish a prima facie case under the ADA, Miller must demonstrate that: (1) he is a disabled person as defined by the ADA; (2) he is qualified,

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[4] Russelectric argues that "[w]hether Miller is or is not 'disabled' is an essential element of his case and Miller cannot plead such as a fact." (Def.'s Brief, Docket #7, at 5.) For support, Russelectric quotes the court in Campbell v. City of San Antonio, 43 F.3d 973, 975 (5th Cir. 1995), stating that "[c]onclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." (Def.'s Brief at 5.) In Miller's response to Russelectric's motion to dismiss, Miller argues that Russelectric was asking the Court to apply the "heightened pleading standard"of Campbell, which was subsequently limited by the Supreme Court in Leatherman v. Tarrant County Narcotics Unit, 507 U.S. 163 (1993). (Pl.'s Resp., Docket #11, at 2-3.) However, Russelectric, in its reply, explains that it was not attempting to invoke the "heightened pleading standard" of Campbell. Russelectric contends that it was only citing the standard for a motion to dismiss that the "[c]ourt must consider 'all well-pleaded facts in the complaint as distinguished from conclusory allegations.'" (Def.'s Reply, Docket #14, at 2) (quoting Mitchell v. King, 537 F.2d 385, 386 (10th Cir. 1976)). Moreover, Russelectric notes that the standard for motion to dismiss "has nothing to do with the 'heightened pleading standard.'" (Def.'s Reply at 3.) Thus, whether to apply a "heightened pleading standard" to the motion to dismiss is moot.

with or without reasonable accommodation, to perform the essential functions of the job held or desired; and (3) Russelectric discriminated against him because of his disability. See Doyal v. Oklahoma Heart, No. 99-5040, 2000 WL 633239, at *2 (10th Cir. May 17, 2000); Sutton v. United Air Lines, Inc., 130 F.3d 893, 897 (10th Cir. 1997), aff'd, 527 U.S. 471, 119 S. Ct. 2139 (1999).[5]

Definition of Disability

The ADA defines disability as: "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such impairment." 42 U.S.C. § 12102(2). Miller proceeds under the definition in subsection (A). Thus, to qualify as having a disability pursuant to the definition, Miller must establish: (1) his single seizure is a physical or mental impairment; (2) driving is a major life activity; and, (3) his seizure substantially limits the major life activity of driving. See Doyal, 2000 WL 633239, at *2 (outlining three steps under which to proceed when considering subsection A).

Physical or Mental Impairment

To determine whether the underlying condition or disorder is a physical or mental impairment, the court must determine whether such condition or disorder "diminishes in a material

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[5] In Sutton, the Supreme Court held that measures taken to correct or mitigate a mental or physical impairment must be considered in determining whether a person is "substantially limited" in a major life activity. 119 S. Ct. at 2146. In Sutton, twins alleged that due to their severe myopia, they were substantially limited in a major life activity, and thus disabled under the ADA. However, because the twins could fully correct their visual impairments, the court determined that they were not substantially limited in any major life activity. Id. at 2149; see also Murphy v. United Parcel Service, Inc., 527 U.S. 516, 119 S. Ct. 2133, 2137 (1999) (considering person in his medicated state when determining whether high blood pressure substantially limited him in any major life activity). However, for purposes of the Report and Recommendation, unless noted otherwise, reference to Sutton is to the Tenth Circuit's discussion of disability for purposes of the ADA.

respect any of the enumerated body systems[6] of the individual." Sutton, 130 F.3d at 899. Miller alleges that his impairment, a single seizure, was an "epileptic attack." While epilepsy has been cited as an impairment, Moreno v. Am. Ingredients Co., No. 99-2119-GTV, 2000 WL 527808, at *2 (D. Kan. April 7, 2000) (finding epilepsy qualifies as a physical impairment); see also Bragdon v. Abbott, 524 U.S. 624, 633 (1998) (quoting commentary accompanying the regulations interpreting the Rehabilitation Act of 1973, 29 U.S.C. § 791 et seq., which cites epilepsy as an impairment); Poindexter v. Atchison, Topeka and Sante Fe Ry. Co., 168 F.3d 1228, 1231 (10th Cir. 1999) (quoting Bragdon), the undersigned questions whether a single attack following a car accident constitutes epilepsy. See Deas v. River West, L.P., 152 F.3d 471, 478 n.17 (5th Cir. 1998) (noting the "term 'seizures' does not appear to describe a class of impairments that share sufficiently similar characteristics such that they should be treated as a single 'impairment' or 'disability' under the ADA"), cert. denied, 119 S. Ct. 2392 (1999) and cert. denied, 119 S. Ct. 2411 (1999); Matczak v. Frankford Candy and Chocolate Co., 136 F.3d 933, 938 (3rd Cir. 1997) (recognizing that mild forms of epilepsy cause nothing more than 'minor isolated muscle jerks'). For purposes of this decision, the undersigned recommends that the Court assume, without deciding, that Miller's single seizure constitutes epilepsy, and thus qualifies as a mental or physical impairment.

Major Life Activity

Without demonstrating that a plaintiff's physical or mental impairment substantially limits a major life activity, the ADA is inoperative. See Bragdon, 524 U.S. at 637. Thus, it is necessary for a plaintiff to identify the particular "major life activity" that the impairment affects. See

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[6] The enumerated body systems are: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine. 29 C.F.R. § 1630.2(h).

Poindexter, 168 F.3d at 1230. Such identification ensures that only significant impairments will be protected by the ADA. See Colwell v. Suffolk County Police Dep't, 158 F.3d 635, 642 (2nd Cir. 1998), cert. denied, 526 U.S. 1018 (1999). In the instant case, Miller suggests that driving is a "major life activity." Miller supports his proposition by relying on the definition of "major life activity" found in Sutton.

In Sutton, the Tenth Circuit defined "major life activities" to include "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." Sutton, 130 F.3d at 900. Miller alleges that because driving is a manual task, it falls within the ADA's definition of "major life activity." However, to allow driving to qualify as a "major life activity" simply because it is a manual task would diminish the significance of the word "major" in the term "major life activity."

The Supreme Court emphasized the importance of the word "major" in Bragdon, 524 U. S. at 638. In Bragdon, the Court addressed the issue of whether reproduction constitutes a "major life activity." Answering in the affirmative, the Court noted that "the plain-meaning of the word 'major' denotes comparative importance and suggests that the touchstone for determining an activity's inclusion in the statutory rubric is its significance." Id. Recognizing that "[r]eproduction and the sexual dynamics surrounding it are central to life process itself," the Court held that reproduction is a "major life activity." Id. In making this determination, however, the Court did not consider whether reproduction was an important part of the particular plaintiff's life. Id. at 638-39. Rather, the sole inquiry was whether the activity is significant within the meaning of the ADA. Id. Thus, in the instant case, the court must determine whether driving is an activity of sufficient significance to constitute a "major life activity," without regard to the role driving plays in Miller's life.

In Colwell, the court addressed the issue of whether driving is a "major life activity" for purposes of the ADA. In that case, an officer alleged that his impairment, resulting from a series of lower back injuries, substantially limited a myriad of "major life activities," including bending, lifting, reaching, working on cars, painting, and driving. In determining whether the specified activities were "major life activities," the court distinguished between activities which are significant and those which are not. Colwell, 158 F.3d at 642. The court assumed bending, reaching, and lifting are "major life activities," yet declined to categorize driving, painting, and working on cars as such. Id. at 643. The court reasoned that the latter activities "incidentally may involve [major life activities], but they are not major life activities in themselves." Id. Thus, the court concluded that driving, painting, and working on cars are "insufficiently fundamental" to be deemed "major life activities." Id. at 642-43.

Employing the reasoning of both Bragdon and Colwell, the Tenth Circuit, in Pack v. Kmart Corp., 166 F.3d 1300, 1305 (10th Cir.), cert. denied, 120 S. Ct. 45 (1999), distinguished between activities that are "major life activities" and those that are only components of "major life activities." The court held that sleeping is a "major life activity," whereas concentration is not. Id. The court found that sleeping "is a basic activity that the average person in the general population can perform with little or no difficulty, similar to the activities of walking, seeing, hearing, speaking." Id. However, the court determined concentration may be "a significant and necessary component of a major life activity, such as working, learning, or speaking, but it is not an 'activity' itself." Id.

The undersigned proposes a finding that driving is not a "major life activity." The undersigned suggests that, similar to concentration, driving may be a "significant and necessary

component" of the "major life activity" of working,[7] but driving itself is not sufficiently significant to constitute a "major life activity." See id. Because Miller cannot demonstrate that his impairment substantially limited a "major life activity," the undersigned recommends that the Court hold that Miller does not have a disability as defined by the ADA, and has thus failed to state a claim.

Conclusion

Based upon the foregoing, the undersigned recommends that Russelectric's motion to dismiss [Docket #6] be **GRANTED.**

Objections

Within ten days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections with the Clerk of the District Court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). If such objections are timely filed, the District Judge assigned to this case will conduct a *de novo* review of the record and determine whether to adopt or revise this Report and Recommendation or whether to recommit the matter to the undersigned. Id. As part of the *de novo* review, the District Judge will consider the parties' written objections to the Report and Recommendation. If no objections are timely filed, the district court may adopt the Report and Recommendation without any review. **The failure to file written objections may bar the party failing to object from appealing any of the factual or legal findings in this Report and Recommendation that are accepted or adopted by the District Court.** See Thomas v. Arn, 474 U.S. 140 (1985); Haney v. Addison, 175 F.3d 1217 (10th Cir. 1999); United States v. One Parcel of

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[7] The Supreme Court noted that there are "some conceptual difficulties in defining 'major life activities' to include work" because of the circular argument inherent in the claim. Sutton, 119 S. Ct. at 2151; see also Sinkler v. Midwest Property Managment Limited Partnership, 209 F.3d 678, 685 n. 1 (7th Cir. 2000).

Real Property, with Buildings, Appurtenances, Improvements, and Contents, Known as: 2121 East 30th Street, Tulsa Oklahoma, 73 F.3d 1057 (10th Cir. 1996).

DATED this 10th day of July, 2000.

Claire V Eagan

CLAIRE V. EAGAN
UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing pleading was served on each of the parties hereto by mailing the same to them or to their attorneys of record on the 10th Day of July, 2000.

T. Portillo, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 10 2000

TOBIN DON LEMMONS,

Plaintiff,

vs.

CORBIN COLLINS; KEVIN STATTS; JAMES HENDERSON; TULSA POLICE DEPARTMENT; and TULSA COUNTY DISTRICT ATTORNEY'S OFFICE,

Defendants.

No. 00-CV-291 H (J)

FILED
JUL 7 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

On April 10, 2000, Plaintiff submitted for filing a civil rights complaint pursuant to 42 U.S.C. § 1983 and a motion for leave to proceed *in forma pauperis*. By order filed April 24, 2000, the Court granted Plaintiff's motion for leave to proceed *in forma pauperis* and directed Plaintiff to submit an initial partial filing fee payment of $4.33 as required by 28 U.S.C. § 1915(b). Plaintiff was also advised that "[f]ailure to comply with this Order may result in the dismissal of this action without prejudice and without further notice." The deadline for submission of the partial fee payment was May 24, 2000. The Court notes that the copy of the April 24, 2000 Order mailed to Plaintiff was returned, marked "return to sender" and "NIC."

To date, Plaintiff has not submitted the partial fee payment in compliance with the Court's April 24, 2000 Order. Plaintiff has also failed to apprise the Court of any change of address. Because Plaintiff has failed to comply with the Court's Order of April 24, 2000, the Court finds that this action may not proceed and should, therefore, be dismissed without prejudice for failure to prosecute.

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ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's civil rights *Complaint* is **dismissed without prejudice** for lack of prosecution.

IT IS SO ORDERED.

This 7th day of July, 2000.

Sven Erik Holmes
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 10 2000

ALEXIS STEVENS,)
)
Plaintiff,)
vs.) No. 99-CV-905-H (E)
)
CREEK COUNTY JAIL,)
)
Defendant.)

FILED
JUL 7 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

On October 25, 1999, Plaintiff submitted for filing a civil rights complaint pursuant to 42 U.S.C. § 1983. By order filed November 2, 1999, the Court directed Plaintiff to cure certain deficiencies in his papers. Specifically, Plaintiff was advised that this action could not proceed unless he either paid in full the $150.00 filing fee required to commence this action or submitted a properly supported motion for leave to proceed *in forma pauperis*. In addition, Plaintiff was directed to submit an amended complaint identifying each defendant he intended to sue and the service documents necessary for effecting service of process. Lastly, the Clerk of Court was directed to mail to Plaintiff the forms and information necessary for preparing the documents ordered by the Court. Plaintiff was also advised that these deficiencies were to be cured by December 3, 1999, and that "[f]ailure to comply with this Order could result in the dismissal of this action without prejudice and without further notice."

On December 1, 1999, Plaintiff filed an amended complaint and submitted summons and USM-285 forms. However, to date, Plaintiff has neither paid the $150.00 filing fee nor submitted a motion for leave to proceed *in forma pauperis* nor shown cause for his failure to do so. Because Plaintiff has failed to resolve the filing fee issue by either paying the fee in full or submitting a

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motion to proceed *in forma pauperis* in compliance with the Court's Order of November 2, 1999, the Court finds that this action may not proceed and should, therefore, be dismissed without prejudice for failure to prosecute.

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's civil rights *Complaint*, as amended, is **dismissed without prejudice** for lack of prosecution.

IT IS SO ORDERED.

This 7TH day of July, 2000.

Sven Erik Holmes
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D
JUL 07 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JAMES RALPH WHITSELL, JR., *ex rel.* UNITED STATES,	)	
Plaintiff,	)	
v.	)	**Case No. 99-CV-1113-K(J)**
D.O.J. *ex rel.* UNITED STATES OF AMERICA,	)	
Defendant.	)	

ENTERED ON DOCKET
DATE JUL 10 2000

ORDER

Before the Court are Plaintiff's *pro se* motions to proceed *in forma pauperis*, petition for self-executing document legislation, petition for a proclamation that an insurrection exists, petition for self-executing constitutional provisions, motion for document legislation, petition for insurrection, petition for constitutional "pervitions" [sic], petition that the Constitution "go on gard [sic] duty for the Plaintiff Emperer [sic]," petitions to impose order, petition for "Premble order," and petition to quash complaint.

Plaintiff is entitled to proceed *in forma pauperis*, based on the representations contained in his Affidavit of Financial Status, but his complaint must be dismissed for failure to state a claim upon which relief can be granted. When a plaintiff is proceeding *in forma pauperis*, the Court shall dismiss the case if the Court determines that the action is frivolous or malicious; fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B). Plaintiff's complaint states that he came to the courthouse "to get this Court

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Order Filed U.S.C.A. Tenth Circuit Nov. 1, 1999 No. 99-5114 D.C. No. 98-CV-0614-K N.D. Okla. Order and Judgment . . . ." (Compl. at 1.) Plaintiff further alleges that Loretta Radford in the United States Attorney's office "said that the order # 99-5114 could not be cited for me to call the Tenth Circuit" and that the court clerk's office told him that the "the order could not be cited that the 10 Circuit affirm the 10th District order." (Compl. at 1.) Plaintiff files this action seeking damages for the deprivation of his civil rights under 42 U.S.C. § 1983 and for conspiracy to interfere with civil rights under 42 U.S.C. § 1985. The Court has determined that the Tenth Circuit order to which Plaintiff is referring is *Whitsell v. United States*, Case No. 99-5114, 1999 WL 987355 (10th Cir. Nov. 1, 1999). In that order, the Tenth Circuit affirmed this Court's dismissal without prejudice of Plaintiff's claims in Case No. 98-CV-614-K for failure timely to serve. *See id.* *1. Therefore, the alleged assertions by Ms. Radford and the court clerk's office are correct; Plaintiff's dismissal *was* affirmed by the Tenth Circuit, and he did not prevail in that forum. Furthermore, the Tenth Circuit's opinion in *Whitsell*, 1999 WL 987355, has been filed in Case No. 98-CV-614 on November 4, 1999. The Tenth Circuit's opinion has been given full effect in that the dismissal of Case No. 98-CV-614-K has remained unaltered, and Plaintiff has not stated a claim upon which relief can be granted.

IT IS THEREFORE ORDERED that Plaintiff's motion for leave to proceed *in forma pauperis* (# 2) is GRANTED; the above-captioned case is DISMISSED for failure to state a claim upon which relief can be granted; Petition Self-executing document legislation (#

3) is DENIED as MOOT; Petition (# 4) is DENIED as MOOT; Pitition Self ex-cuting Constition Provisions (# 5) is DENIED as MOOT; Motion for Document Legislation (# 6) is DENIED as MOOT; Pitition for inserection (# 7) is DENIED as MOOT; Pitition for Constitutional Pervitions (# 8) is DENIED as MOOT; Pitition Order (# 9) is DENIED as MOOT; Pitition, Imposse Order (# 10) is DENIED as MOOT; Pitition Imposse Order (# 11) is DENIED as MOOT; Pitition, Premble Order (# 12) is DENIED as MOOT; and Pitition to Quash Complaint (# 14) is DENIED as MOOT.

ORDERED THIS 7 DAY OF JULY, 2000.

TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL 07 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,
on behalf of Farm Service Agency,
formerly Farmers Home Administration,

Plaintiff,

v.

NENA N. HUGHES, a single person,

Defendants.

ENTERED ON DOCKET

DATE JUL 10 2000

CIVIL ACTION NO. 99-CV-0801-M

ADMINISTRATIVE CLOSING ORDER

Upon the Motion of the United States of America, acting on behalf of Farm Service Agency, by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Cathryn D. McClanahan, Assistant United States Attorney, and for good cause shown it is hereby ORDERED that this action is administratively closed pending settlement. The Plaintiff is directed to notify the Court of the status of this case by November 15, 2000 or this action shall be deemed dismissed without prejudice.

Dated this 7th day of July, 2000.

Frank H. McCarthy
UNITED STATES ~~DISTRICT~~ JUDGE
MAGISTRATE

APPROVED AS TO FORM AND CONTENT:

STEPHEN C. LEWIS
United States Attorney

CATHRYN D. MCCLANAHAN, OBA #014853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463

CDM:css

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UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

JUL - 6 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

CLIFFORD E. MAY,
SSN: 465-58-3724,

Plaintiff,

v.

KENNETH S. APFEL, Commissioner, Social Security Administration,

Defendant.

Case No. 97-CV-0525-EA

ENTERED ON DOCKET
DATE JUL 7 2000

ORDER DENYING ATTORNEY FEES

On February 25, 2000, this Court reversed and remanded the Commissioner's decision for further proceedings, thereby making plaintiff the prevailing party. Plaintiff has submitted an application for attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), seeking an award in the amount of $3,304.50 for attorney fees. The Commissioner objects to plaintiff's motion, claiming that the position of the government was substantially justified.

Under EAJA, the Court shall award fees and other expenses, as well as court costs, to a prevailing party other than the United States in a civil action by or against the government, "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A); Fulton v. Heckler, 784 F.2d 348, 349 (10th Cir. 1986). The government bears the burden of showing that its position was substantially justified. E.g., Gutierrez v. Sullivan, 953 F.2d 579, 584 (10th Cir.1992). The term "substantially justified" means "justified to a degree that could satisfy a reasonable person." Pierce v. Underwood, 487 U.S. 552, 565 (1988). Further, the Supreme Court stated that "a position can be justified even though it is not correct, and we believe it can be substantially (i.e., for the most part)

justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact." Id. at 565 n.2; see Fulton v. Heckler, 784 F.2d 348, 349 (10th Cir.1986). In a Social Security case, the lack of substantial evidence supporting the government's position, standing alone, does not establish that the government's position was not substantially justified for purposes of an award of attorney fees under the Equal Access to Justice Act. Hadden v. Bowen, 851 F.2d 1266, 1269 (10th Cir. 1988).

Here, the Commissioner was reasonable in arguing that there was substantial evidence in the record. See Weakley v. Bowen, 803 F.2d 575 (10th Cir. 1986). Plaintiff argued that the ALJ (1) failed to find that claimant meets Listing 1.05C; (2) ignored the opinion of the treating physician and rating physician; (3) failed to consider the impact of all claimant's impairments and failed to include those impairments in his hypothetical question to the vocational expert; (4) failed to perform a proper pain and credibility analysis; (5) failed to find that the evidence of non-disability is outweighed by substantial evidence of disability. The Court determined that the ALJ erred by failing to properly analyze claimant's impairments by reference to Listing 1.05C described in 20 C.F.R., Part 404, Subpart P, Appendix 1 (the "Listings"). The record before the Court presented conflicting and inconclusive medical opinions, and the Court noted that the evidence was insufficient for the Court to determine if claimant's condition constituted a vertebrogenic disorder.

As the Commissioner points out, the Court declined to reach the remaining issues. The issue on which the Court based its decision was a close one; by contrast, many of claimant's allegations with regard to the remaining issues "appear[ed] to misstate the record and otherwise lack[ed] merit." The Court's order specifically indicated, in the conclusion, that the ALJ's decision could ultimately turn out to be correct, and nothing in the order was to be taken to suggest that the Court had

concluded otherwise. That statement is not meant to indicate in all cases that the position of the Commissioner was substantially justified.

In this case, however, the government has borne its burden of showing that its position was "justified to a degree that could satisfy a reasonable person." Pierce, 487 U.S. at 565. Adopting plaintiff's argument that "[a]ny decision which fails to apply correct legal standards can never be substantially justified" (Reply Br., Dkt. # 22, at 1) would obliterate the statutory exemption requirement where, as here, whether the ALJ applied the correct legal standards is legitimately disputed. Further, "special circumstances make an award unjust," 28 U.S.C. § 2412(d)(1)(A); Fulton, 784 F.2d at 349, given plaintiff's misstatements of the record and otherwise groundless arguments advanced by plaintiff with regard to the remaining issues in the case.

IT IS THEREFORE ORDERED that plaintiff be **DENIED** attorney fees requested under EAJA. This action is hereby dismissed.

It is so **ORDERED** this 6th day of July, 2000.

Claire V Eagan

CLAIRE V. EAGAN
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 7 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JEFF GRAEFE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 99-CV-0989-H(M)**
	)	
DELOITTE & TOUCHE, LLC, and JOHN GIMPERT	)	
	)	
Defendants.	)	

ENTERED ON DOCKET
DATE JUL 7 2000

JOINT STIPULATIOIN OF DISMISSAL WITH PREJUDICE OF PLAINTIFF'S COMPLAINT

Plaintiff, Jeff Graefe, and Defendants Deloitte & Touche, LLC and John Gimpert stipulate to the dismissal with prejudice of Plaintiff's Complaint and the claims alleged therein, with each party bearing their own respective costs and attorney's fees.

Respectfully submitted,

JEFF GRAEFE
Pro Se Plaintiff
2831 East Second Street
Tulsa, Oklahoma 74104
(918) 585-8315

R. TOM HILLIS, OBA#12338
BARKLEY TITUS HILLIS & REYNOLDS, PLLC
First Place Tower
15 East Fifth Street, Suite 2750
Tulsa, Oklahoma 74103
(918) 587-6800
(918) 587-6822 (Facsimile)

- and -

MICHAEL P. ROYAL
Texas State Bar No. 00784886
WILLIAM L. BUX
Texas State Bar No. 07462950
LOCKE LIDDELL & SAPP LLP
2200 Chase Tower
2200 Ross Avenue
Dallas, Texas 75201
(214) 740-8000
(214) 740-8800 (Facsimile)

ATTORNEYS FOR DEFENDANTS,
DELOITTE & TOUCHE AND JOHN GIMPERT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JIM AND LAURIE AKIN,

Plaintiff,

and LEOLA PHILIPS,

Intervening Plaintiff

v.

DAVID K. HOEL, INTERNAL REVENUE SERVICE, ex rel. United States of America, and JEAN AKIN,

Defendants.

ENTERED ON DOCKET
DATE JUL 7 2000

Case No. 97-CV-907-H

FILED
JUL 6 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

Pursuant to the agreed stipulation of the parties, filed June 22, 2000, Intervening Plaintiff Leola Phillips shall receive twenty-five percent (25%) of the interpled funds and Defendant United States of American shall receive seventy-five percent (75%).

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Intervening Plaintiff Leola Phillips in the amount of twenty-five percent (25%) of the interpled funds in this case and for Defendant United States of American in the amount of seventy-five percent (75%) of the interpled funds in this case.

IT IS SO ORDERED.

This 5TH day of July, 2000.

Sven Erik Holmes
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

PAMELA P. JONES, as Personal Representative of the Estate of Zachary W. Nobile, deceased, et al.,	)	ENTERED ON DOCKET
	)	DATE JUL 7 2000
Plaintiff,	)	
vs.	)	**Case No.: 98CV-479-K**
CITY OF BROKEN ARROW, JOHN WALLS and E.A. FERGUSON,	)	**FILED**
	)	JUL 06 2000
Defendant.	)	Phil Lombardi, Clerk U.S. DISTRICT COURT

JUDGMENT

COMES THIS MATTER BEFORE ME the undersigned Judge, pursuant to regular setting on the application for approval of settlement. I find the settlement was negotiated in good faith on the basis of disputed facts and interpretations of law, that the settlement is reasonable in amount in light of the issues presented and as a result of good faith negotiation and compromise and is not the product of any improper purpose. The settlement is cumulative of all prior judgments and orders of this court in this case, and further includes all pending matters or claims of any nature, including damages of any sort, costs and attorney fees, in favor of Plaintiff against the City or its employees.

THEREFORE, I find the Defendant City of Broken Arrow is indebted to Plaintiff in the cumulative amount of $680,000.00, and the settlement is hereby approved. Upon payment of this sum, Defendant Walls and Defendant Ferguson and Defendant City of Broken Arrow shall not be further indebted to Plaintiff on any judgment or order previously given in this case. This judgment shall be satisfied by the City through payment of $100,000.00 to the estate of Zachary

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Nobile, and payment of $580,000.00 to Plaintiff's attorneys. The settlement is hereby approved. If the judgment is paid on or before July 21st, 2000, no additional interest shall be due. Plaintiff shall promptly execute a release and satisfaction of judgment upon payment.

Dated July 6, 2000.

TERRY C. KERN, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Approved as to form and content:

Attorneys for Plaintiff

Attorneys for Walls

Attorneys for Ferguson

Attorneys for City of Broken Arrow

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	ENTERED ON DOCKET
	)	DATE JUL 7 2000
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 00-CV-156-K(M)**
	)	
THE SUM OF TWO THOUSAND ONE HUNDRED THIRTY DOLLARS AND NO/100 ($2,130.00)	)	F I L E D
	)	JUL 0 6 2000
Defendant.	)	Phil Lombardi, Clerk U.S. DISTRICT COURT

JUDGMENT OF FORFEITURE

This cause having come before this Court upon the plaintiff's Motion for Judgment of Forfeiture as to the defendant property as to all entities and/or persons interested in the defendant property, the Court finds as follows:

The verified Complaint for Forfeiture *In Rem* was filed in this action on the 18th day of February 2000, alleging that the defendant property is subject to seizure and forfeiture pursuant to 49 U.S.C. § 80303 and 19 U.S.C. § 1613 because it represents the equity value of one 1994 Pontiac Grand Am Automobile, VIN #1G2NE1539RM558021 which was used, or intended to be used, in any manner or part, to commit or to facilitate the transportation, concealment, receipt, possession, purchase, sale, exchange, or giving away of contraband.

A Warrant of Arrest and Notice *In Rem* was issued on the 22nd day of March 2000, by the Clerk of this Court to the United States Customs Service for the seizure and arrest of the defendant property and for publication of notice of arrest and seizure once a week for three consecutive weeks in the Tulsa Daily Commerce & Legal News, Tulsa, Oklahoma,

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Tulsa, Oklahoma, a newspaper of general circulation in the district in which this action is pending and in which the defendant property was located, and further providing that the United States Customs Service serve the defendant property and all known potential owners thereof with a copy of the Complaint for Forfeiture *In Rem* and Warrant of Arrest and Notice *In Rem*, and that immediately upon the arrest and seizure of the defendant property the United States Customs Service take custody of the defendant property and retain the same in its possession until the further order of this Court.

On the 27th day of March 2000, the United States Customs Service served a copy of the Complaint for Forfeiture *In Rem*, the Warrant of Arrest and Notice *In Rem*, and the Order on the defendant property.

Danny Brooks and Bradley Brooks were determined to be the only potential claimants in this action with possible standing to file a claim to the defendant property. Danny Brooks and Bradley Brooks executed and filed their Stipulation for Forfeiture herein on February 24, 2000, wherein they stipulated that the defendant property $2,130.00 represents the equity value of One 1994 Pontiac Grand Am Automobile, VIN #1G2NE1539RM558021, and further stipulated and agreed that the defendant property $2,130.00 is subject to forfeiture pursuant to 19 U.S.C. § 1613 in lieu of forfeiture of the above-described vehicle which is subject to forfeiture, pursuant to 49 U.S.C. §§ 80301-80303, because it was used to transport contraband counterfeit federal reserve notes.

The Department of Treasury Process Receipt and Return form reflecting the service upon the defendant property is on file herein.

All persons or entities interested in the defendant property were required to file their

claims herein within ten (10) days after service upon them of the Warrant of Arrest and Notice *In Rem*, publication of the Notice of Arrest and Seizure, or actual notice of this action, whichever occurred first, and were required to file their answer(s) to the Complaint within twenty (20) days after filing their respective claim(s).

No other persons or entities upon whom service was effected more than thirty (30) days ago have filed a Claim, Answer, or other response or defense herein, save and except Danny Brooks and Bradley Brooks, who filed their Stipulation for Forfeiture herein.

The United States Customs Service gave public notice of this action and arrest to all persons and entities by advertisement in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in the district in which this action is pending and in which the defendant property was located, on March 30, April 6 and 13, 2000. Proof of Publication was filed May 1, 2000.

No other claims in respect to the defendant property have been filed with the Clerk of the Court, and no other persons or entities have plead or otherwise defended in this suit as to said defendant property, save and except Danny Brooks and Bradley Brooks who filed their Stipulation for Forfeiture herein, and the time for presenting claims and answers, or other pleadings, has expired.

The plaintiff, the United States of America, and the claimant, Danny Brooks and Bradley Brooks, entered into a Stipulation for Forfeiture of the defendant property, wherein they stipulated that the defendant property $2,130.00 represents the equity value of One 1994 Pontiac Grand Am Automobile, VIN #1G2NE1539RM558021, and further stipulated and agreed that the defendant property $2,130.00 is subject to forfeiture pursuant to 19

U.S.C. § 1613 in lieu of forfeiture of the above-described vehicle which is subject to forfeiture, pursuant to 49 U.S.C. §§ 80301-80303, because it was used to transport contraband counterfeit federal reserve notes. The Stipulation was filed February 24, 2000.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the following-described defendant property:

> THE SUM OF TWO THOUSAND ONE HUNDRED THIRTY DOLLARS AND NO/100 ($2,130.00),

be, and it hereby is, forfeited to the United States of America for disposition according to law.

Entered this 6 day of July 2000.

TERRY C. KERN
Judge for the United States District Court for the Northern District of Oklahoma

SUBMITTED BY:

CATHERINE J. DEPEW
Assistant United States Attorney

N:\udd\lpeaden\Forfeiture\brooks\Judgment - Judgment of Forfeiture.wpd

FILED

JUL - 7 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

WAYLON HENDERSON T.

JUDGMENT AND ORDER ON REVOCATION OF SUPERVISED RELEASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 00-CR-054-001-C

ENTERED ON DOCKET

Jack Schisler
Defendant's Attorney

DATE 7/7/00

THE DEFENDANT, heretofore convicted and sentenced in Count 1 as set out in Judgment and Commitment Order entered November 27, 1995, and released to the four (4) years year term of supervised release May 11, 1999:

Admitted guilt to violation of Mandatory, Standard and Special conditions of the term of supervision.

Condition Number	Nature of Violation
Mandatory Condition	Violation of Law
Special Condition 1	Excessive use of alcohol
Speical Condition 2	Positive urinalysis
Special Condition 4	Failure to participate in drug treatment program
Standard Condition 4	Failure to follow instructions of Probation Officer

As pronounced on June 26, 2000, the defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Signed this the 7th day of July, 2000.

The Honorable H. Dale Cook
U.S. District Judge

Defendant's Soc. Sec. No.: 447-82-6757
Defendant's Date of Birth: 08/07/72
Defendant's USM No.: 14523-047
Defendant's Residence and Mailing Address: 3424 s. 95th E. Ave., , Tulsa, OK 74145

11

IMPRISONMENT

The Court finds that the instant offense occurred after November 1, 1987. Consistent with the 10th Circuit decision in U.S. v. Lee, Chapter Seven provisions are not mandatory, but the Court has considered them in arriving at this sentence.

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of twelve (12) months.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By: _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of thirty-six (36) months.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

STANDARD CONDITIONS OF SUPERVISION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
10. You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer; and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.

2. The defendant shall abide by the "Special Financial Conditions" enumerated in General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

STATEMENT OF REASONS

Pursuant to 18 U.S.C. § 3553 (c), the Court states the reasons for imposition of the sentence:

The defendant was sentenced within the recommended guideline range due to the nature of the violations and his criminal history.

FILED

JUL - 7 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

V.

Donald Bernard Sanford

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 99-CR-159-001-C

Allen M. Smallwood
Defendant's Attorney

ENTERED ON DOCKET

DATE 7/7/00

THE DEFENDANT:

Pleaded guilty to Counts 1 & 3 of the Indictment on March 28, 2000.

Accordingly, the defendant is adjudged guilty of such counts, involving the following offenses:

Title and Section	Nature of Offense	Date Offense Concluded	Counts
18 USC 2423(b)	Interstate Travel With Intent to Engage in Sexual Act With a Minor	9/10/99	1
18 USC 2423 (b)	Interstate Travel With Intent to Engage in Sexual Act With a Minor	10/1/99	3

As pronounced on June 26, 2000, the defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Counts 2 & 4 of the Indictment are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Signed this the 7th day of July, 2000.

The Honorable H. Dale Cook
U.S. District Judge

Defendant's Soc. Sec. No.: 220-90-9356
Defendant's Date of Birth: 7/16/78
Defendant's USM No.: 08671-062
Defendant's Residence Address: Rt. 2 Box 880-A, Clarksburg, West Virginia 26301
Defendant's Mailing Address: c/o David L. Moss Criminal Justice Center, 300 North Denver Avenue, Tulsa OK 74103

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 63 months as to each of Counts 1 & 3, said term to run concurrently with any sentence imposed in Tulsa County Case No. CF-99-4832.

The Court makes the following recommendations to the Bureau of Prisons:

That the defendant be desginated to a Bureau of Prisons' facility near his home in West Virginia, if possible.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

_____
_____
_____
_____

Defendant delivered on _____ to _____ at _____, with a certified copy of this Judgment.

_____
United States Marshal

By: _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of two (2) years as to each of Counts 1 & 3, said terms to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the Probation Office in the district to which the defendant is released as soon as possible, but in no event later than 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

STANDARD CONDITIONS OF SUPERVISION

1. You will not leave the judicial district without permission of the Court or probation officer.
2. You will report to the probation officer and submit a truthful and complete written report within the first five days of each month.
3. You will answer truthfully all inquiries by the probation officer, and follow the instructions of the probation officer.
4. You will successfully participate in cognitive/life skills training or similar programming as directed by the probation officer.
5. You will support your dependents and meet other family responsibilities, to include complying with any court order or order of administrative process requiring the payment of child support.
6. You will work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
7. You will notify the probation officer ten days prior to any change of residence or employment.
8. You will not frequent places where controlled substances are illegally sold, or administered; you shall refrain from excessive use of alcohol and will not purchase, possess, use, or distribute any controlled substance or paraphernalia related to such substances, except as prescribed by a physician.
9. You will submit to urinalysis or other forms of testing to determine illicit drug use as directed by the probation officer; if directed by the probation officer, you will successfully participate in a program of testing and treatment (to include inpatient) for substance abuse until released from the program by the probation officer.
10. You will not associate with any persons engaged in criminal activity, and will not associate with any person convicted of a crime unless granted permission to do so by the probation officer.
11. You will permit a probation officer to visit at any time at your home, employment or elsewhere and will permit confiscation of any contraband observed in plain view by the probation officer.
12. You will provide access to all personal and business financial information as requested by the probation officer; and you shall, if directed by the probation officer, not apply for or acquire any credit unless permitted in advance by the probation officer.
13. You will notify the probation officer within seventy-two hours of being arrested, questioned, or upon having any contact with a law enforcement officer.
14. You will not enter into any agreement to act as an informer or special agent of a law enforcement agency without the permission of the Court.
15. As directed by the probation officer, you will notify third parties of risks that may be occasioned by your criminal record or personal history or characteristics, and permit the probation officer to make such notifications and to confirm your compliance with such notification requirements.
16. You will not possess a firearm, destructive device, or other dangerous weapon.

ADDITIONAL CONDITIONS:

1. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.

2. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgment shall be provided to the U. S. Probation Office immediately upon taking residency.

3. The defendant shall abide by the "Special Financial Conditions" enumerated in General Order Number 99-12, filed with the Clerk of the Court on July 13, 1999.

4. The defendant shall abide by the "Special Sex Offender Conditions" enumerated in General Order Number 99-17, filed with the Clerk of the Court on July 13, 1999.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties; payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal;(4) cost of prosecution; (5) interest; (6) penalties.

ASSESSMENT	RESTITUTION	FINE
$200.00	$0.00	$500.00

ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of $200 for Counts 1 & 3 of the Indictment, which shall be due immediately.

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of $500 for Count 1 of the Indictment. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

FORFEITURE

The defendant shall forfeit the defendant's interest in the following property to the United States: as set forth in Count 5 of the Indictment.

Unless the interest is waived, the defendant shall pay interest on any fine or restitution of more than $2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

If the fine and/or restitution is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614. The defendant shall notify the Court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine.

All criminal monetary penalty payments are to be made to the United States District Court Clerk, 333 West 4th Street, Rm. 411, Tulsa, Oklahoma 74103, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program.

STATEMENT OF REASONS

The Court adopts the factual findings and guidelines application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	26	
Criminal History Category:	I	
Imprisonment Range:	63 to 78 months	Counts 1 & 3
Supervised Release Range:	2 to 3 years	Counts 1 & 3
Fine Range:	$12,500 to $125,000	Counts 1 & 3

Total amount of Restitution: $ Not Applicable

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

BJS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL - 7 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

RONALD RAY GARDNER,)
)
Plaintiff,)
)
vs.) Case No. 99-CV-0822-C (M)
)
SILVIA McQUEEN; and)
TYREA SEALS, CCA,)
)
Defendants.)

ENTERED ON DOCKET
DATE JUL 07 2000

ORDER

On September 29, 1999, Plaintiff submitted for filing a civil rights complaint pursuant to 42 U.S.C. § 1983. By order filed November 2, 1999, the Court directed Plaintiff to either submit a motion for leave to proceed *in forma pauperis* supported by the required certified copy of his trust fund account statement (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint obtained from the appropriate official of each prison at which he is or was confined or show cause in writing for his failure to do so. Plaintiff was advised that "[f]ailure to comply with this order may result in the dismissal of this action without prejudice." The deadline for submission of the motion was December 2, 1999. The Court notes that no mail from the Court to Plaintiff has been returned.

To date, Plaintiff has not submitted the motion to proceed *in forma pauperis* in compliance with the Court's Order. Because Plaintiff has failed to comply with the Court's Order of November 2, 1999, the Court finds that this action may not proceed and should, therefore, be dismissed without prejudice for failure to prosecute.

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's civil rights *Complaint* is **dismissed without prejudice** for lack of prosecution.

SO ORDERED THIS 7th day of July, 2000.

H. DALE COOK, Senior Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D
JUL - 6 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JASON PHILBEE and KAMDYN PHILBEE, individually and on behalf of the Plan

Plaintiffs,

vs.

BETHPHAGE, INC., and BETHPHAGE HEALTH CARE PLAN,

Defendants

Case No. 99-CV-0983-E(J)

ENTERED ON DOCKET
DATE JUL 07 2000

ORDER

Now before the Court are the Motions for Summary Judgment of the Plaintiffs, Jason Philbee ("Jason") and Kamdyn Philbee ("Kamdyn") (sometimes collectively referred to as "Philbees"), (Docket #15), and the Defendants Bethphage, Inc., and Bethphage Health Care Plan ("Bethphage") (Docket #13). This dispute involves the question of whether Bethphage was correct in denying medical claims made by the Philbees against the Bethphage Health Care Plan.

BACKGROUND

Kamdyn is an employee of Bethphage and was a member of the Bethphage Health Care Plan. The Complaint alleges that both before, and after the birth of their daughter, Kristin, the Philbees had made several attempts to enroll Kristin in the Plan through repeated conversations with Bethphage employee, Donna Price. In each instance, the Philbees were

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told by Price that the enrollment was being processed. For some reason, the Philbees were never given the necessary forms to enroll Kristin until more than 30 days after her birth. Bethphage subsequently denied the Philbee's claims for medical expenses related to Kristin's birth because Kristin was not enrolled in the Plan within 30 days after her birth. The Philbees brought this action under ERISA, 29 U.S.C. §1132 *et seq.*, to recover the medical expenses that were denied by Bethphage. Both parties have asked the Court to enter summary judgment in their respective favors.

DISCUSSION

A. Facts

The Court finds that the following material facts are not in dispute: Kamdyn enrolled in the Bethphage Health Care Plan ("Plan") on December 7, 1998 by enrolling herself, her spouse and two dependents. The Plan is a self-funded and self administered employee health plan provided to those employed by Bethphage. Such Plan is governed by ERISA as an employee benefit health care plan. The Plan contains the following pertinent provisions as to enrollment of newborn infants:

> A newborn child of a covered Employee who has Dependant coverage is automatically enrolled in this Plan; otherwise separate enrollment for the newborn child is required. Charges for covered nursery care will be applied toward the Plan of the newborn child. If the newborn child is required to be enrolled and is not enrolled on a timely basis (within 30 days of birth), there will be no payment from the Plan and the covered parent will be responsible for all costs.

Kamdyn has completed numerous enrollment forms prior to the birth of her child, Kristin, and was aware of such procedure. Kristin was born to the Philbees on February 11,

1999. At the time of Kristin's birth, the Philbees were participants in the Plan and dependent medical coverage was in effect for them. On the day after Kristin's birth, Jason went to the Bethphage office in Tulsa to fill out whatever papers were necessary to get Kristin added to Kamdyn's medical insurance.[1] On that occasion, Jason met with Donna Price and requested that Kristin be added to Kamdyn's medical insurance. Donna Price is an employee of Bethphage and held the title of "human resources technician". Donna Price told Jason that the enrollment form would be prepared and Jason provided Price the necessary information. Around February 16, 1999, Bethphage received a claim from Tulsa Regional Medical Center, as well as other labs and pathologists for medical expenses for the birth of Kristin.

During the period of February 15 through 26, 1999, Jason was attending classes at the Bethphage office in Tulsa. At lunch or during breaks from class, Jason often found Donna Price and asked her if the paperwork for the Kristin's insurance enrollment had been completed. To each inquiry, Jason was told by Donna Price that she was working on it and that it would be completed soon.

Kamdyn learned, at Kristin's two-week medical checkup, that Kristin was not on Kamdyn's insurance. Kamdyn went to the Bethphage office to meet with Donna Price to see about getting Kristin's medical bills paid by the Plan. On that occasion, Kamdyn encountered Donna Price in a conference room working on "timetrack timesheets". Kamdyn

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[1] Several facts herein were asserted as uncontroverted by the Philbees and said facts were supported by affidavits. While Bethphage states in its brief that it does not agree with some of these facts, Bethphage has not submitted any evidence to controvert said facts and, therefore, the Court will accept those facts as being uncontroverted. Mere denial of the facts is not sufficient. See *Celotex Corp. v. Catrett*, infra,.

told Price that Kristin was not on the medical insurance and Price asked Kamdyn to write down Kristin's information and that Price would prepare the enrollment form as soon as she completed working on the timesheets. Kamdyn complied with Price's request. On March 8, 1999, Kamdyn attended a house manager's meeting at the Bethphage office in Tulsa. On that occasion, Kamdyn encountered Donna Price and asked her about Kristin's enrollment form. Price stated that she was having trouble with the timetrack timesheets and was unable to prepare the enrollment form. On March 9 or 10, 1999, Jason had an appointment scheduled with Donna Price to complete the enrollment form. Jason appeared for the appointment and waited for 1.5 hours, but Price did not appear. Later that afternoon, Kamdyn spoke with Donna Price by telephone and was told that Price would prepare the enrollment form and put it in Kamdyn's "work/house box" before Price left work that evening. The enrollment form was not in Kamdyn's box the next day. On another occasion in March, 1999, the Philbees went to the Bethphage office in Tulsa to talk to Donna Price about Kristin's medical bills. A co-worker, Patricia Hutchinson, saw the Philbees talking to Price in the hallway and overheard the Philbees tell Price that they "had been in several times before to get the baby added to our insurance". Price responded by saying she "didn't understand why the baby had not been added because she had filled out the paperwork and submitted it." In late March, 1999, Jason was finally presented with a prepared enrollment form adding Kristin to Kamdyn's insurance. Jason executed the enrollment form on March 25, 1999.

Donna Price was subsequently terminated by Bethphage for excessive absenteeism

and positive drug testing.

On or about May 5, 1999, Bethphage denied the claims submitted for Kristin's medical bills. The reason given for the denial was that Kristin was not an insured under the Plan. The medical bills in question total $1,963.87.

B. Summary Judgment Standard

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 (1986); *Windon Third Oil & Gas v. FDIC,* 805 F.2d 342 (10th Cir. 1986). In *Celotex,* the court stated:

> The plain language of Rule 56(c) mandates the entry of summary judgment... and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

477 U.S. at 317 (1986). To survive a motion for summary judgment, the nonmovant "must establish that there is a genuine issue of material facts..." The evidence and inferences therefrom must be viewed in a light most favorable to the nonmoving party. *Conaway v. Smith,* 853 F.2d 789, 792 n. 4 (10th Cir. 1988). Unless the moving party can demonstrate its entitlement beyond a reasonable doubt, summary judgment must be denied. *Norton v. Liddel,* 620 F.2d 1375, 1381 (10th Cir. 1980).

C. Analysis of ERISA Requirements

ERISA allows a plan beneficiary to seek judicial review of the denial of claims made

against a plan, but the legislation does not establish the standard of review to be used by the court. *Pitman v. Blue Cross and Blue Shield of Oklahoma,* 2000 WL 663133, __F.3d__ (10th Cir. 2000). However, the standard of review has been supplied by the United States Supreme Court. In *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, (1989), the Supreme Court held that courts should review benefit denials *de novo*, unless the benefit plan gives the administrator or fiduciary "discretionary authority to determine eligibility for benefits or to construe the terms of the plan". *Firestone,* 489 U.S. at 115. If the administrator or fiduciary has such discretion, the court applies an abuse of discretion or arbitrary and capricious standard to the administrator's actions. In the present case, the Bethphage Plan gives the administrator such discretion,[2] so this Court will apply an abuse of discretion or arbitrary and capricious standard to Bethphage's actions.

The Court must also determine whether the plan administrator was acting under a conflict of interest in denying the benefits and, if so, the court may weigh such conflict as a factor in determining whether the administrator abused its discretion. *Pitman* at 3. When determining whether a conflict of interest existed, the court should consider several, non-exhaustive factors including whether:

> (1) the plan is self-funded; (2) the company funding the plan appointed and compensated the plan administrator; (3) the plan administrator's performance reviews or level of compensation were linked to the denial of benefits; and (4) the provision of benefits had a significant economic impact on the company administering the plan.

Jones v. Kodak Medical Assistance Plan, 169 F. 3d 1287 at 1291; *Kimber v. Thiokol Corp.*,

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[2]See page 45 of the Bethphage Health Care Plan

196 F.3d 1092 at 1098. In this particular case, the Plan is self-funded, where Bethphage is both the "insurer" and the administrator of the plan. When deciding this issue recently, the 10th Circuit Court of Appeals in *Pitman, supra*, adopted the reasoning of the 11th Circuit when it held:

> when an insurance company serves as ERISA fiduciary to a plan composed solely of a policy or contract issued by that company, it is exercising discretion over a situation for which it incurs *direct, immediate expense as a result of benefit determinations favorable to plan participants.* (Emphasis added)

Pitman at 4, citing *Brown v. Blue Cross & Blue Shield of Alabama, Inc.*, 898 F.2d 1556, 1561 (11th Cir.1990); see also *Doe v. Group Hospitalization & Medical Services*, 3 F.3d 80, 86 (4th Cir.1993). Here, Bethphage is not an insurance company as was present in both *Pitman* and *Brown, supra*, but in operating a self-funded plan, every dollar of paid benefits comes out of the pocket of Bethphage. The Courts' reasoning in *Pitman* and *Brown* would be equally applicable to Bethphage. Bethphage has a financial interest in denying claims in order to remain economically viable. *See also Lee v. Blue Cross/Blue Shield of Alabama*, 10 F.3d 1547, 1552 (11th Cir.1994). Thus, the Court finds that there is a conflict of interest in this case. Under the sliding scale approach adopted by the Tenth Circuit, the Court decreases the level of deference owed in proportion to the severity of the conflict. *Jones*, 169 F.3d at 1291. Therefore, "where the plan administrator operates under a conflict of interest ... the court may weigh that conflict as a factor in determining whether the plan administrator's actions were arbitrary and capricious." *Charter Canyon Treatment Center v. Pool Co.*, 153 F.3d 1132 at 1135 (10th Cir. 1998).

The copy of the Plan offered into evidence states as follows:

> A newborn child of a covered Employee who has Dependant coverage is *automatically enrolled* in this Plan; *otherwise* separate enrollment for the newborn child is required. Charges for covered nursery care will be applied toward the Plan of the newborn child. *If* the newborn child *is required to be enrolled* and is not enrolled on a timely basis (within 30 days of birth), there will be no payment from the Plan and the covered parent will be responsible for all costs.[3] (Emphasis added)

Therefore, if a newborn is to be covered under the Plan and its parents were either not enrolled, or were enrolled but did not have dependant coverage, a separate enrollment for the newborn would be required. However, both of Kristin's parents were enrolled under the plan and Kamdyn's enrollment included dependant coverage for her family. Thus, Kristin was automatically enrolled at birth and a separate enrollment was not necessary.

Furthermore, even if a separate enrollment had been required, the evidence before the Court clearly shows that the Philbees did everything they could possibly do to get a separate enrollment form for Kristin, short of tying Donna Price to a chair until she had prepared the proper form. Kamdyn and Jason made repeated attempts to execute a separate enrollment form and they were continually thwarted in their efforts by Donna Price, the Bethphage employee who was responsible for providing the Philbees with the proper enrollment form.

In its briefs, Bethphage states that it is without sufficient knowledge or information to admit or deny the statements contained in the affidavits submitted by the Philbees concerning their efforts to get a separate enrollment form for Kristin. However, Bethphage submits no evidence to controvert such affidavits and Bethphage's denial, by itself, is not

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[3]See page 5 of the Plan

sufficient to withstand summary judgement. *Celotex Corp. v. Catrett, supra.*

The Court finds that Bethphage abused its discretion and acted in an arbitrary and capricious manner in denying the medical claims submitted by the Philbees on behalf of Kristin.

In light of the above findings, there remains no genuine issue as to any material fact, and the Plaintiffs, Jason Philbee and Kamdyn Philbee are entitled to judgment as a matter of law. The Plaintiffs' motion for summary judgment is GRANTED and Defendants' cross-motion for summary judgment is DENIED.

Dated this 6th day of July 2000.

JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL - 6 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JASON PHILBEE and KAMDYN PHILBEE, individually and on behalf of the Plan

Plaintiffs,

vs.

BETHPHAGE, INC., and BETHPHAGE HEALTH CARE PLAN,

Defendants

Case No. 99-CV-0983-E(J)

ENTERED ON DOCKET
DATE JUL 07 2000

JUDGMENT

In accord with the Order filed this date sustaining the Plaintiff's Motion for Summary Judgment, the Court hereby enters judgment in favor of the Plaintiffs, Jason Philbee and Kamdyn Philbee and against the Defendants, Behtphage, Inc., and Bethphage Health Care Plan in the amount of $1,963.87. Any applications for costs and attorneys fees shall comply with the local rules of this Court and 29 U.S.C. §1132(g)(1).

IT IS SO ORDERED THIS 6th DAY OF July, 2000.

JAMES O. ELLISON, SENIOR JUDGE
UNITED STATES DISTRICT COURT

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FILED
JUL 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM T. LAWRENCE, JR.,

Defendant.

No. ~~89-CR-054-B~~ 99-CV-954-B

ENTERED ON DOCKET
DATE JUL 06 2000

ORDER

Before the Court is the motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #54) filed by Defendant William T. Lawrence, Jr., on November 9, 1999. After reviewing the history of Defendant's post-conviction filings, the Court, by Order filed November 15, 1999, directed Defendant to show cause why this motion should not be dismissed as barred by the statute of limitations imposed by § 2255. Defendant filed his show cause response (Docket #56) on December 16, 1999. After careful review of Defendant's show cause response and the record, the Court concludes that Defendant's motion pursuant to § 2255 is time-barred and should be summarily dismissed pursuant to Rule 4(b), *Rules Governing Section 2255 Proceedings for the United States District Courts.*

BACKGROUND

On October 10, 1989, Defendant was convicted by a jury of possession of a sawed-off rifle and possession of firearm by convicted felon. (#25). Thereafter, the Court sentenced Defendant to 27 months imprisonment to be followed by three years of supervised release. A fine of $3,000.00

2

and a special assessment fee of $50 were also imposed. (#29). Defendant appealed. By Order filed March 6, 1991, the Tenth Circuit Court of Appeals affirmed Defendant's conviction and sentence. (#42).

By Order filed September 12, 1994, Defendant's term of supervised release was revoked and Defendant was committed to the custody of the Bureau of Prisons for 24 months. On December 9, 1996, Defendant filed motions to proceed *in forma pauperis* and to receive copies of his judgment of conviction and transcripts. (#s 51 and 52). By Order filed December 30, 1996 (#53), Defendant was found to be indigent and he was sent a copy of his judgment of conviction. However, his motion for transcripts was denied.

Almost three (3) years later, on November 9, 1999, Defendant proceeding *pro se* filed this § 2255 motion asserting that he received ineffective assistance of trial and appellate counsel. Upon receipt of the motion, the Court directed Defendant to show cause why the motion should not be dismissed as time barred because it was filed outside the one-year time limitation established by § 2255, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (the "AEDPA"). In response to the Court's Order, Defendant states that he "is jurisprudence ignorant and knew nothing concerning a limitations period in a writ of habeas corpus § 2255." (#56 at 2). Defendant also argues that to dismiss his motion pursuant to § 2255's limitations provision would constitute an impermissible retroactive application of the AEDPA.

ANALYSIS

Prior to the enactment of the AEDPA on April 24, 1996, § 2255 contained no statute of limitations. The AEDPA amended 28 U.S.C. § 2255 by adding a time-limit provision. Specifically, 28 U.S.C. § 2255 now provides as follows:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the fact supporting the claim or claims presented could have been discovered through the exercise of due diligence.

In United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997), the Tenth Circuit held that "prisoners whose convictions became final on or before April 24, 1996 must file their § 2255 motions before April 24, 1997." In so doing the Tenth Circuit allowed these prisoners a grace period of one year after the AEDPA's enactment within which to file their § 2255 motions.

On appeal to the Tenth Circuit, Defendant's sentence was affirmed on March 6, 1991. Defendant did not file a petition for writ of certiorari in the United States Supreme Court. Therefore, Defendant's conviction became final on or about June 4, 1991. See Griffith v. Kentucky, 479 U.S. 314, 321 n. 6 (1987). Because his conviction became final prior to AEDPA's enactment, Defendant had until April 23, 1997 to file his motion under the limitations period set forth in § 2255(1). Simmonds, 111 F.3d at 746. However, Defendant's § 2255 motion was not filed with the Court until November 9, 1999, more than 2 ½ years beyond the deadline.

As an initial matter, the Court finds that application of the AEDPA's amendments to Defendant's motion is not impermissibly retroactive. By recognizing a one-year grace period following the AEDPA's enactment, retroactivity concerns were eliminated. See Simmonds, 111

F.3d at 745-46. Because Defendant was afforded the grace period within which to file a timely § 2255 motion, the Court rejects his argument that dismissal of his motion would raise retroactivity concerns.

In addition, the Court finds no basis for extending the limitations period applicable to Defendant's motion. While § 2255 provides for three situations in which the limitations period will begin to run after a conviction becomes final, none apply to extend the limitations period in this case. Nor does Defendant present any justification constituting "extraordinary circumstances" warranting equitable tolling. See United States v. Willis, 202 F.3d 1279, 1281 n. 3 (10th Cir.2000) (citing Miller v. Marr, 141 F.3d 976, 978 (10th Cir.1998)). Such circumstances exist if "the petitioner has 'in some extraordinary way . . . been prevented from asserting his or her rights.'" Miller v. New Jersey State Dept. of Corrections, 145 F.3d 616, 618 (3d Cir.1998) (citation omitted). The habeas petitioner must also plead with "specificity regarding the alleged lack of access and the steps he took to diligently pursue his federal claims." Miller v. Marr, 141 F.3d 976, 978 (10th Cir.1998). The Court specifically rejects Defendant's argument that his claims should not be subject to the limitations bar because he is "jurisprudence ignorant" and had no knowledge of the one-year restriction imposed by § 2255. See, e.g., Fadayiro v. United States, 30 F.Supp.2d 772, 781 (D.N.J.1998) ("Ignorance of the law does not justify equitable tolling of a statute of limitations."); Henderson v. Johnson, 1 F.Supp.2d 650, 656 (N.D.Tex.1998) (claims that petitioner did not have professional legal assistance are not the extraordinary circumstances required to toll the statute). Furthermore, Defendant in this case has presented nothing to indicate he has pursued his claims diligently. As a result, the Court concludes that Defendant's § 2255 motion is clearly untimely and should be dismissed as barred by the statute of limitations.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 (Docket #54) is **dismissed with prejudice** as time-barred.

SO ORDERED THIS 5th day of July, 2000.

THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT COURT

FILED
JUL 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANCHOR DRILLING FLUIDS U.S.A., INC., an Oklahoma corporation, Plaintiff, vs. M-I L.L.C., a Delaware limited liability company, Defendant, JILL FOURCADE CHANCE, Intervenor.	)	No. 99-C-31-B(J)

ENTERED ON DOCKET
DATE JUL 06 2000

ORDER

Before the Court is the Joint Motion of Plaintiff and Defendant to Dismiss Plaintiff's Counterclaim Without Prejudice (Docket No. 112). Plaintiff Anchor Drilling Fluids USA, Inc. ("Anchor Drilling") and Defendant M-I, L.L.C. ("M-I") jointly move to dismiss without prejudice Anchor Drilling's counterclaim against M-I to indemnify and hold it harmless from any liability the Court may find due and owing to the intervenor Jill Fourcade Chance ("Chance") in her garnishment action against Anchor Drilling and M-I. As both Anchor Drilling and M-I are in agreement as to the dismissal of the counterclaim and such dismissal does not affect Chance's garnishment claim against these parties, the Court grants the motion.[1]

[1] In their joint motion to dismiss plaintiff's counterclaim against M-I, Anchor Drilling and M-I state that "[o]n January 6, 2000, Anchor and M-I entered into a Settlement and Release Agreement, and the principal action was dismissed with prejudice." This statement is in error.

IT IS SO ORDERED this 5th day of July, 2000.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT

While the parties moved to dismiss the principal action on January 19, 2000, the Court did not grant the motion pending the filing of Chance's garnishment claim. As Chance's Complaint was filed on March 31, 2000, the Court now grants Anchor Drilling's and M-I's joint motion to dismiss their claims in the principal action. (Docket No. 77). Only the garnishment action filed by intervenor Chance against Anchor Drilling and M-I remains.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

LUCAS K. PRENTISS,

Plaintiff,

vs.

DILLARD'S DEPARTMENT STORE; WASHINGTON COUNTY DISTRICT ATTORNEY'S OFFICE; and DAVID GARLAND ROBBINS, Bartlesville Police Officer,

Defendants.

Case No. 99-CV-1003-B (J)

ENTERED ON DOCKET
DATE JUL 06 2000

ORDER

On November 19, 1999, Plaintiff submitted for filing a civil rights complaint pursuant to 42 U.S.C. § 1983 and a motion for leave to proceed *in forma pauperis*. By order filed December 7, 1999, the Court directed Plaintiff to cure certain deficiencies in his motion for leave to proceed *in forma pauperis*. Specifically, Plaintiff was advised that this action could not proceed unless he submitted an amended motion for leave to proceed *in forma pauperis* supported by the required certified copy of his trust fund account statement (or institutional equivalent) for the 6-month period immediately preceding the filing of the complaint obtained from the appropriate official of each prison at which he is or was confined or show cause in writing for his failure to do so. In addition, the Clerk of Court was directed to mail to Plaintiff the forms and information necessary for preparing the document ordered by the Court. Plaintiff was also advised that these deficiencies were to be cured by January 10, 2000, and that "[f]ailure to comply with this Order may result in dismissal of this action without prejudice." To date, Plaintiff has neither submitted the amended motion nor shown cause for his failure to do so. In addition, no correspondence from the Court to Plaintiff been returned.

Because Plaintiff has failed to submit the amended motion to proceed *in forma pauperis* in compliance with the Court's Order of December 7, 1999, the Court finds that this action may not proceed and should, therefore, be dismissed without prejudice for failure to prosecute.

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's civil rights *Complaint* is **dismissed without prejudice** for lack of prosecution.

SO ORDERED this 5th day of July, 2000.

THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT COURT

FILED
JUL 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RONALD RAY GARDNER,

Plaintiff,

vs.

CHARLES BURTON, Unit Manager;
CHARLES CRANDALE, Warden,

Defendants.

Case No. 99-CV-0834-B (J)

ENTERED ON DOCKET
DATE JUL 06 2000

ORDER

On September 30, 1999, Plaintiff submitted for filing a civil rights complaint pursuant to 42 U.S.C. § 1983. In compliance with the Court's October 6, 1999 Order, Plaintiff filed his motion for leave to proceed *in forma pauperis* on October 29, 1999. By order filed November 4, 1999, the Court granted Plaintiff's motion for leave to proceed *in forma pauperis* and directed Plaintiff to submit an initial partial filing fee payment of $11.50 as required by 28 U.S.C. § 1915(b). Plaintiff was advised that unless he either (1) paid the initial partial filing fee, or (2) showed cause in writing for the failure to pay, this action would be subject to dismissal without prejudice to refiling, and no fees or costs will be imposed or collected. The deadline for submission of the partial fee payment was December 6, 1999. The Court notes that no mail from the Court to Plaintiff has been returned.

To date, Plaintiff has not submitted the partial fee payment in compliance with the Court's Order. Because Plaintiff has failed to comply with the Court's Order of November 4, 1999, the Court finds that this action may not proceed and should, therefore, be dismissed without prejudice for failure to prosecute.

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's civil rights *Complaint* is **dismissed without prejudice** for lack of prosecution.

SO ORDERED THIS 5th day of July, 2000.

THOMAS R. BRETT, Senior Judge
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 6 2000

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 00CV268H(M)
	)	
DARYL J. WILSON,	)	
	)	
Defendant.	)	

FILED
JUL 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

DEFAULT JUDGMENT

The Plaintiff's Application for Default Judgment comes on for hearing this 5TH day of JULY, 2000. The Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Daryl J. Wilson, appears not. The Court finds that pursuant to Rule 55 of the Federal Rules of Civil Procedure, notice of the hearing was given to the Defendant.

The Court gave due consideration to the pleadings and documents filed in support of the plaintiff's Complaint. The Court finds the plaintiff is entitled to judgment from its review of the supporting documentation.

The Court being fully advised and having examined the court file finds that Defendant, Daryl J. Wilson, was served with Summons and Complaint on March 31, 2000. The time within which the Defendant could have answered or otherwise moved as to the

Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Daryl J. Wilson, for the principal amount of $1,800.00 and $5,079.10, plus accrued interest of $966.82 and $4,401.08, plus administrative charges in the amount of $76.17 and $19.88, plus interest thereafter at the rate of 3% and 7% percent per annum until judgment, plus filing fees in the amount of $150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:

PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/dlo

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	ENTERED ON DOCKET
	)	DATE JUL 6 2000
Plaintiff,	)	
	)	
v.	)	No. 00-CV-4-H(M)
	)	
HOPE D. MAYES,	)	FILED
	)	JUL 5 2000
Defendant.	)	Phil Lombardi, Clerk U.S. DISTRICT COURT

DEFAULT JUDGMENT

The Plaintiff's Application for Default Judgment comes on for hearing this 5TH day of July, 2000. The Plaintiff appearing by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, and the Defendant, Hope D. Mayes, appears not. The Court finds that pursuant to Rule 55 of the Federal Rules of Civil Procedure, notice of the hearing was given to the Defendant.

The Court gave due consideration to the pleadings and documents filed in support of the plaintiff's Complaint. The Court finds the plaintiff is entitled to judgment from its review of the supporting documentation.

The Court being fully advised and having examined the court file finds that Defendant, Hope D. Mayes, was served with Summons and Complaint on May 11, 2000. The time within which the Defendant could have answered or otherwise moved as to the

Complaint has expired and has not been extended. The Defendant has not answered or otherwise moved, and default has been entered by the Clerk of this Court. Plaintiff is entitled to Judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Plaintiff have and recover judgment against the Defendant, Hope D. Mayes, for the principal amount of $2,845.36, plus accrued interest of $2,722.80, plus interest thereafter at the rate of 8 percent per annum until judgment, plus filing fees in the amount of $150.00 as provided by 28 U.S.C. § 2412(a)(2), plus interest thereafter at the current legal rate of 6.375 percent per annum until paid, plus costs of this action.

United States District Judge

Submitted By:

PHIL PINNELL, OBA # 7169
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918)581-7463

PEP/llf

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
on behalf of the Secretary of Veterans Affairs,

Plaintiff,

v.

JERRY LEE ORBAN aka Jerry L. Orban
aka Jerry Orban;
SPOUSE, if any, OF JERRY LEE ORBAN
aka Jerry L. Orban aka Jerry Orban;
TERESA J. ORBAN aka Teresa Jean Orban
aka Teresa J. Glassbrenner;
SPOUSE, if any, OF TERESA J. ORBAN
aka Teresa Jean Orban
aka Teresa J. Glassbrenner;
CARA ORBAN aka Cara B. Orban
aka Cara Neumayr;
STATE OF OKLAHOMA ex rel.
Department of Human Services;
SOURCE ONE MORTGAGE SERVICES
CORPORATION fka Fireman's Fund
Mortgage Corporation;
COUNTY TREASURER, Tulsa County,
Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

ENTERED ON DOCKET
DATE JUL 6 2000

FILED
JUL 06 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 99-CV-0313-K (J)

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 5 day of July, 2000. The Plaintiff appears by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney; the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, appear by Dick A. Blakeley, Assistant District Attorney, Tulsa County, Oklahoma; that the Defendant, State of

Oklahoma ex rel. Department of Human Services, appears not, having previously filed its Disclaimer; that the Defendants, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Spouse, if any, of Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel; Spouse, if any, of Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel; Cara Orban aka Cara B. Orban aka Cara Neumayr; and Source One Mortgage Services Corporation fka Fireman's Fund Mortgage Corporation, appear not, but make default.

The Court being fully advised and having examined the court file finds that the Defendant, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban, was served with Summons and Complaint by a United States Deputy Marshal on December 29, 1999; that the Defendant, Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel, executed a Waiver of Service of Summons on May 19, 1999; that the Defendant, Cara Orban aka Cara B. Orban aka Cara Neumayr, executed a Waiver of Service of Summons on May 18, 1999; that the Defendant, Source One Mortgage Services Corporation fka Fireman's Fund Mortgage Corporation, was served by certified mail, return receipt requested, delivery restricted to the addressee on September 17, 1999.

The Court further finds that the Defendants, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Spouse, if any, of Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; and Spouse, if any, of Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel, were served by publishing notice of

this action in the Tulsa Daily Commerce and Legal News, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning April 14, 2000, and continuing through May 19, 2000, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Spouse, if any, of Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; and Spouse, if any, of Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel, and service cannot be made upon said Defendants by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Spouse, if any, of Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; and Spouse, if any, of Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of

residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on May 27, 1999; that the Defendant, State of Oklahoma ex rel. Department of Human Services, filed its Disclaimer on December 3, 1999; that the Defendants, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Spouse, if any, of Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel; Spouse, if any, of Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel; Cara Orban aka Cara B. Orban aka Cara Neumayr; and Source One Mortgage Services Corporation fka Fireman's Fund Mortgage Corporation, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on September 23, 1999, Teresa Jean Kappel executed an Affidavit before a notary public stating that she was one and the same person as Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner and that she was a single, unmarried person as of September 23, 1999.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eight (8), Block Five (5), SHANNON PARK SECOND, an Addition in the City and County of Tulsa, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on August 28, 1985, Jerry Lee Orban and Teresa J. Orban executed and delivered to First Security Mortgage Company, their mortgage note in the amount of $46,450.00, payable in monthly installments, with interest thereon at the rate of 11.0 percent per annum.

The Court further finds that as security for the payment of the above-described note, Jerry Lee Orban and Teresa J. Orban, husband and wife, executed and delivered to First Security Mortgage Company, a real estate mortgage dated August 28, 1985, covering the above-described property, situated in the State of Oklahoma, Tulsa County. This mortgage was recorded on September 26, 1985, in Book 4894, Page 1579, in the records of Tulsa County, Oklahoma.

The Court further finds that the Secretary of Veterans Affairs is now the owner of the subject note and mortgage through mesne conveyances. On May 10, 1996, Jerry Lee Orban executed and delivered to the Secretary of Veterans Affairs a Modification and Reamortization Agreement pursuant to which the entire debt due on that date was made principal and the interest rate changed to 6.75 percent per annum.

The Court further finds that on April 3, 1989, Jerry Lee Orban and Teresa Jean Orban were granted a divorce as evidenced by Decree of Divorce, Case No. FD-87-6381, District Court, Tulsa County, State of Oklahoma. This Decree of Divorce was not recorded in the Office of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on June 28, 1991, Jerry L. Orban and Cara Orban fka Cara Neumayr filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 91-02264-C. The subject real property was made a part of the bankruptcy estate as shown on Schedule B-1 of the bankruptcy schedules. On October 22, 1991, a Discharge of Debtor was filed releasing debtors from all dischargeable debts. On December 5, 1991, a Final Decree was entered in the subject bankruptcy case and the case was closed.

The Court further finds that on January 20,1999, Jerry Orban and Cara Orban were granted a divorce as evidenced by the Decree of Divorce, Case No. FD 95-2029, District Court, Tulsa County, State of Oklahoma.

The Court further finds that the Defendants, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban and Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof Plaintiff alleges that there is now due and owing under the note and mortgage, after full credit for all payments made, the principal sum of $51,634.15, plus administrative charges in the amount of $776.00, plus penalty charges in the amount of $141.12, plus accrued interest in the amount of $2,133.62 as of December 11, 1997, plus interest accruing thereafter at the rate of 6.75 percent per annum until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of $458.25

($51.54 fees for service of Summons and Complaint, $396.71 publication fees, $10.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendant, State of Oklahoma ex rel. Department of Human Services, disclaims any right, title or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendants, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Spouse, if any, of Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel; Spouse, if any, of Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel; Cara Orban aka Cara B. Orban aka Cara Neumayr; and Source One Mortgage Services Corporation fka Fireman's Fund Mortgage Corporation, are in default and therefore have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff, the United States of America, acting on behalf of the Secretary of Veterans Affairs, have and recover judgment in rem against Defendants, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban and Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel, in the principal sum of $51,634.15, plus administrative charges in the amount of $776.00, plus penalty charges in the

amount of $141.12, plus accrued interest in the amount of $2,133.62 as of December 11, 1997, plus interest accruing thereafter at the rate of 6.75 percent per annum until judgment, plus interest thereafter at the current legal rate of 6.375 percent per annum until fully paid, plus the costs of this action in the amount of $458.25 ($51.54 fees for service of Summons and Complaint, $396.71 publication fees, $10.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property, plus any other advances.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Spouse, if any, of Jerry Lee Orban aka Jerry L. Orban aka Jerry Orban; Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel; Spouse, if any, of Teresa J. Orban aka Teresa Jean Orban aka Teresa J. Glassbrenner nka Teresa Jean Kappel; Cara Orban aka Cara B. Orban aka Cara Neumayr; State of Oklahoma ex rel. Department of Human Services; Source One Mortgage Services Corporation fka Fireman's Fund Mortgage Corporation; County Treasurer, Tulsa County, Oklahoma; and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell according to Plaintiff's election with or

without appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:
In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:
In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

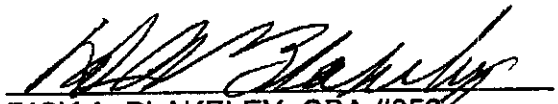
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

UNITED STATES DISTRICT JUDGE

APPROVED:

STEPHEN C. LEWIS
United States Attorney

WYN DEE BAKER, OBA #465
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103
(918) 581-7463



DICK A. BLAKELEY, OBA #852
Assistant District Attorney
406 Tulsa County Courthouse
Tulsa, Oklahoma 74103
(918) 596-4835
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Case No. 99-CV-0313-K(J) (Orban)
WDB:css

FILED

JUL 6 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TAFFINE PRICE, Plaintiff, v. THRIFTY RENT-A-CAR SYSTEM, INC., Defendant.	)	Case No. 99-CV-0847-K (J)

ENTERED ON DOCKET

DATE JUL 6 2000

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Taffine Price and Defendant Thrifty Rent-A-Car-System, Inc., by and through their attorneys of record, and pursuant to Fed.R.Civ.P. 41(a)(1), stipulate to the dismissal of, and do hereby dismiss the above-captioned action with prejudice, each party to bear its own costs and attorneys' fees.

DATED this 30 day of June, 2000.

Eric Poston
POSTON & ASSOCIATES, P.C.
300 East Main Street
Antlers, OK 74523
(580) 298-6581
ATTORNEY FOR THE PLAINTIFF

J. Ronald Petrikin, OBA #7092
CONNER & WINTERS
3700 First Place Tower
15 East Fifth Street
Tulsa, OK 74103-4344
(918) 586-5711
ATTORNEYS FOR THE DEFENDANT

06/30/00 15:17 FAX 918 586 8547 CONNER & WINTERS TULSA 009/009

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 6 2000

DONNA G. BURGESS,

Plaintiff,

vs.

CLASSIC CHEVROLET, INC.,

Defendant.

No. 99-CV-409-K

FILED
JUL 06 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court has been advised that this action has settled or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within sixty (60) days that settlement has not been completed and further litigation is necessary.

ORDERED this 5 day of July, 2000.

TERRY C. KERN, Chief
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ROBERT McCULLOUGH,
SSN: 444-62-0706
Plaintiff,

v.

KENNETH S. APFEL, Commissioner of Social Security Administration,
Defendant.

ENTERED ON DOCKET
DATE JUL 6 2000

Case No. 99-CV-348-K

FILED
JUL 06 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

There being no objection, the Court adopts the Magistrate Judge's Report and Recommendation filed June 7, 2000 (# 10). For the reasons stated therein,

IT IS THEREFORE ORDERED that the Commissioner's decision is REVERSED and REMANDED to permit the Commissioner to provide a reason to support the Step Three decisions.

ORDERED THIS 5 DAY OF July, 2000.

TERRY C. KERN, CHIEF
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
JUL 6 2000
DATE

LAYMON L. HARRIS,

Plaintiff,

vs.

CHARLES CRANDELL, Warden,

Defendant.

No. 99-CV-986-K

FILED
JUL 06 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS AND DISMISSING COMPLAINT AS FRIVOLOUS

On November 17, 1999, Plaintiff, a prisoner appearing *pro se*, filed a motion to proceed *in forma pauperis* (Docket #2) and a 42 U.S.C. § 1983 civil rights complaint (Docket #1). By Order filed November 22, 1999, the Court directed Plaintiff to submit an amended *in forma pauperis* motion containing the financial information required by 28 U.S.C. § 1915(a). On December 23, 1999, Plaintiff submitted his amended motion (#5) along with a "motion to compel" (Docket #6). In his motion to compel, Plaintiff requests assistance from the Court in obtaining the certification by jail officials required for his *in forma pauperis* motion. Plaintiff also attached a copy of his "inmate account statement" to his motion to compel.

In his civil rights complaint, Plaintiff alleges that while incarcerated as a pretrial detainee at the David L. Moss Criminal Justice Center (1) he was denied his evening meal on November 11, 1999, and (2) he was denied adequate access to courts and law material. On June 2, 2000, Plaintiff supplemented his complaint with copies of grievances and inmate request forms related to the incidents forming the bases for his claims. See Docket #10.

A. **Motions to proceed *in forma pauperis* and to compel**

After reviewing Plaintiff's *in forma pauperis* motions and the financial statement attached to his "motion to compel," the Court finds that Plaintiff was without funds in his institutional account(s) for the period immediately preceding the filing of the complaint and is currently without funds sufficient to prepay the $150.00 filing fee. Accordingly, the Court finds Plaintiff is entitled to proceed without prepayment of the filing fee, and his motion for leave to proceed *in forma pauperis* should be granted. However, pursuant to 28 U.S.C. §1915(b)(1), Plaintiff shall be required to pay the full $150 filing fee as set forth hereafter.

Plaintiff shall make monthly payments of 20 percent of the preceding month's income credited to his prison account(s) until he has paid the total filing fee of $150. 28 U.S.C. § 1915(b)(2). The Court will enter an order directing the agency having custody of Plaintiff to collect and forward such monthly payments to the Clerk of the Court each time the amount in the account exceeds $10 until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2). Interference by Plaintiff in the submission of these funds shall result in the dismissal of this action.

Plaintiff is advised that notwithstanding any filing fee, or any portion thereof, that may have been paid, the Court must dismiss at any time all or any part of such complaint which (1) is frivolous or malicious; (2) fails to state a claim on which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e). As discussed below, Plaintiff's complaint in this case is frivolous and subject to dismissal. Nonetheless, Plaintiff is advised that monthly payments will continue to be collected and sent to the Court until full payment of the filing fee has been received.

Because Plaintiff has been granted leave to proceed *in forma pauperis*, his "motion to compel" has been rendered moot and should be denied on that basis.

B. Dismissal

As determined above, Plaintiff is proceeding *in forma pauperis*. In cases where the plaintiff is proceeding *in forma pauperis*, § 1915(e) applies and provides as follows:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court **shall** dismiss the [*in forma pauperis*] case at any time if the court determines that . . . the action . . . is frivolous . . . fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2)(B)(emphasis added). Courts may dismiss *in forma pauperis* complaints as "frivolous" if they rely on "inarguable legal conclusion[s]" or "fanciful factual allegation[s]." Neitzke v. Williams, 490 U.S. 319, 325 (1989). For the reasons discussed below, the Court finds Plaintiff's claims are frivolous and the complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

1. Failure to provide one meal

While the conditions under which a convicted prisoner is held are subject to scrutiny under the Eighth Amendment, the conditions under which a pretrial detainee is confined are scrutinized under the Due Process Clauses of the Fifth and Fourteenth Amendments. See Bell v. Wolfish, 441 U.S. 520, 535 n. 16 (1979). "Although the Due Process clause governs a pretrial detainee's claim of unconstitutional conditions of confinement, the Eighth Amendment standard provides the benchmark for such claims." Craig v. Eberly, 164 F.3d 490, 495 (10th Cir .1998) (citation omitted). "The Eighth Amendment requires jail officials to provide humane conditions of confinement by ensuring inmates receive the basic necessities of adequate food, clothing, shelter, and medical care and by taking reasonable measures to guarantee the inmates' safety." Id. (quotation omitted). An inmate claiming that officials failed to provide humane conditions of confinement "must show that he is incarcerated under conditions posing a substantial risk of serious harm." Farmer v. Brennan,

511 U.S. 825, 834 (1994) (involving allegations of failure to protect). He must also demonstrate that the officials had a "sufficiently culpable state of mind," that is, their acts or omission arose from "deliberate indifference to inmate health or safety." Id. "[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety." Id. at 837.

As his first claim justifying relief under 42 U.S.C. § 1983, Plaintiff alleges that on November 19, 1999, he was not provided an evening meal by jail officials. Plaintiff states that on that date, he was "towards the back of the line" and that by the time he arrived at the food counter, he was told "there were no more trays." Jail officials attempted to provide sack lunches to those prisoners who did not receive a food tray. However, Plaintiff contends that "C/O B. Adams gave [the sack lunches] to two inmates which had already eaten." As a result, Plaintiff did not receive an evening meal resulting in his assertion that "my rights were indeed violated." (#1).

States are required to furnish prisoners with reasonably adequate food. Ramos v. Lamm, 639 F.2d 559, 570 (10th Cir. 1980). The meals must be well balanced and contain nutritional value to preserve health. Id. The prison system or jail is not, however, required to provide inmates with three meals a day. See Spicer v. Collins, 9 F.Supp.2d 673, 687 (E.D. Tex. 1998). In this case, Plaintiff missed one meal. He does not allege that the other two meals he received that day were nutritionally inadequate. In addition, he does not allege that he suffered any harm as a result of missing one meal, or that he was exposed to a substantial risk of harm by missing one meal, or that jail officials were aware of any risk of harm to Plaintiff. See Farmer, 511 U.S. at 834. As a result, the Court finds that Plaintiff's claim that his rights were violated by missing one meal lacks an arguable basis in fact or law and should be dismissed as frivolous.

2. Denial of "adequate" access to courts

"The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Bounds v. Smith, 430 U.S. 817, 828 (1977). The Tenth Circuit Court of Appeals has held that the constitutional right recognized in Bounds "to adequate, effective and meaningful access to the courts" extends to county jails. Love v. Summit County, 776 F.2d 908, 912 (10th Cir.1985); see also Straub v. Monge, 815 F.2d 1467, 1469-70 (11th Cir.1987). However, Plaintiff in the instant case does not claim that he had neither access to legal materials nor to counsel. See Ruark v. Solano, 928 F.2d 947 (10th Cir.1991) (where prisoner alleges total denial of access to legal resources, dismissal is inappropriate). In fact, Plaintiff acknowledges that he was provided access to legal research by completing an "attorney conference request form." Plaintiff merely express his dissatisfaction with the legal research provided to him, claiming that the statutes and other references brought to him were of little use to him since they referred to Robbery when he had been charged with Second Degree Burglary.

In addition, an inmate alleging a violation of constitutional access to the courts "must show actual injury." Lewis v. Casey, 518 U.S. 343, 349 (1996); Penrod v. Zavaras, 94 F.3d 1399, 1403 (10th Cir.1996) (per curiam) (interpreting Lewis). For example, an inmate cannot bring a constitutional access to the court claim simply because that person's prison law library is subpar. See Lewis, 518 U.S. at 351. Rather, such an inmate "must go one step further and demonstrate that the alleged shortcomings in the library ... hindered his efforts to pursue a legal claim." Id. In the instant case, Plaintiff has not demonstrated, nor has he even alleged, that he suffered any prejudice as a result of perceived inadequacies in access to legal research material provided by jail officials.

Thus, the Court concludes that Plaintiff's claim lacks an arguable basis in law and should be dismissed as frivolous.

CONCLUSION

Plaintiff's claims are frivolous and this action must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). This dismissal should count as Plaintiff's first "prior occasion" under 28 U.S.C. § 1915(g).[1]

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Plaintiff's motion for leave to proceed *in forma pauperis* (#2), as amended (#5), is **granted**. Nonetheless, Plaintiff will be responsible for full payment of the $150 filing fee as mandated by 28 U.S.C. § 1915(b).

2. Plaintiff's motion to compel (#6) is **denied as moot.**

3. Plaintiff's 42 U.S.C. § 1983 complaint is **dismissed with prejudice,** pursuant to 28 U.S.C. § 1915(e)(2)(B), as frivolous.

5. The Clerk is directed to **flag** this dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) as Plaintiff's first "prior occasion" for purposes of 28 U.S.C. § 1915(g).

SO ORDERED THIS 5 day of July, 2000.

TERRY C. KERN, Chief Judge
UNITED STATES DISTRICT COURT

1/ 28 U.S.C. § 1915(g) provides as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

FILED

JUL 6 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	)	
vs.	)	Case No. 00CV427H(J)
CHARLES G. CRAWFORD, Defendant.	)	

ENTERED ON DOCKET

DATE JUL 6 2000

NOTICE OF DISMISSAL

COMES NOW the United States of America by Stephen C. Lewis, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Phil Pinnell, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action without prejudice.

Dated this 6th day of July, 2000.

UNITED STATES OF AMERICA

Stephen C. Lewis
United States Attorney

PHIL PINNELL, OBA #7169
Assistant United States Attorney
333 W. 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 6th day of July, 2000, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Charles G. Crawford, Rt. 1 Box 148, Hominy, OK 74035.

Debra L. Overstreet
Financial Litigation Agent

FILED
JUL 6 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TAFFINE PRICE,

Plaintiff,

v.

THRIFTY RENT-A-CAR SYSTEM, INC.,

Defendant.

Case No. 99-CV-0847-K (J)

ENTERED ON DOCKET
DATE JUL 6 2000

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Taffine Price and Defendant Thrifty Rent-A-Car-System, Inc., by and through their attorneys of record, and pursuant to Fed.R.Civ.P. 41(a)(1), stipulate to the dismissal of, and do hereby dismiss the above-captioned action with prejudice, each party to bear its own costs and attorneys' fees.

DATED this 30 day of June, 2000.

Eric Poston
POSTON & ASSOCIATES, P.C.
300 East Main Street
Antlers, OK 74523
(580) 298-6581
ATTORNEY FOR THE PLAINTIFF

J. Ronald Petrikin, OBA #7092
CONNER & WINTERS
3700 First Place Tower
15 East Fifth Street
Tulsa, OK 74103-4344
(918) 586-5711
ATTORNEYS FOR THE DEFENDANT

06/30/00 15:17 FAX 918 586 8547 CONNER & WINTERS TULSA 009/009

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 6 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

DEBORAH WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case No. 99-CV-0832-BU(E)**
	)	
DON HUME LEATHER,	)	
	)	
Defendant.	)	

ENTERED ON DOCKET
DATE JUL 6 2000

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1)(ii), the Plaintiff, Deborah Williams, and Defendant, Don Hume Leathergoods, Inc., hereby stipulate that the above-styled cause is dismissed with prejudice, and Plaintiff agrees that all rights, causes of action, claims or other proceedings which she may have, known or unknown, asserted or unasserted, against Defendant are dismissed with prejudice. The Plaintiff stipulates that all claims or causes of action which she may have against Defendant, as well as against any and all supervisors, employees, or agents of Defendant, are released and dismissed with prejudice.

Respectfully submitted,

Karen Goins, OBA # 13188
Stipe Law Firm
P. O. Box 701110
Tulsa, OK 74170
ATTORNEYS FOR PLAINTIFF

Paula J. Quillin, OBA # 7368
FELDMAN, FRANDEN, WOODARD & FARRIS

525 South Main, Suite 1000
Tulsa, OK 74103-4514
Tel: 918-583-7129
Fax: 918-584-3814

-and-

Coy D. Morrow, OBA # 6443
WALLACE, OWENS, LANDERS, GEE,
MORROW, WILSON, WATSON & JAMES
21 South Main
P. O. Box 1168
Miami, OK 74355
Tel: 918-542-5501
Fax: 918-542-5400

**ATTORNEYS FOR DEFENDANT,
DON HUME LEATHERGOODS, INC.**

CERTIFICATE OF SERVICE PER F.R.C.P. 5

I hereby certify that on the 6 day of ~~June~~ July, 2000, I caused a true and correct copy of the above and foregoing to be delivered in a manner allowed by F.R.C.P. 5 to the following:

Karen Goins, Esq.
Stipe Law Firm
P. O. Box 701110
Tulsa, OK 74170

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 6 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNDERWRITERS AT LLOYD'S LONDON, CNA INTERNATIONAL REINSURANCE COMPANY LIMITED; and ZURICH RE (U.K.) LTD.	
Plaintiffs	
vs.	Case No: 99-CV1032BU(E)
HOUSING AUTHORITY OF THE CHEROKEE NATION OF OKLAHOMA; JOEL THOMPSON; SAM ED BUSH; STANLEY JOE CRITTENDON; ALEYENE HOGNER; BILLY HEATH; NICK LAY; MELVINA SHOTPOUCH; CHARLES ADDINGTON; and ROBERT LEWANDOWSKI,	
Defendants	

ENTERED ON DOCKET
DATE JUL 6 2000

STIPULATION OF DISMISSAL, WITHOUT PREJUDICE, OF DEFENDANTS HACN, THOMPSON, BUSH, CRITTENDON, HOGNER, HEATH, ADDINGTON AND LEWANDOWSKI

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, plaintiffs and the following named defendants stipulate that the captioned claim be dismissed, without prejudice as to those defendants:

Housing Authority of the Cherokee Nation of Oklahoma; Joel Thompson; Sam Ed Bush; Stanley Joe Crittendon; Aleyene Hogner; Billy Heath; Charles Addington; and Robert Lewandowski.

Plaintiffs dismissed this action, without prejudice, as to defendant Melvina Shotpouch on May 12, 2000. Therefore, the only remaining defendant is Nick Lay. All parties to this stipulation agree to bear their own costs and attorney's fees.

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mail-cpy rec'd
CJS

Jack S. Dawson OBA #2235
James A. Scimeca OBA #10950
MILLER DOLLARHIDE
100 Park Avenue, 2nd Floor
Oklahoma City, Oklahoma 73102
Telephone: (405) 236-8541
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ATTORNEYS FOR PLAINTIFFS

Donn F. Baker OBA #443
239 W. Keetoowah
Tahlequah, OK 74464
Telephone: 918-456-1233

-and-

Harvey L. Chaffin OBA #1588
Jo Nan Allen, OBA # 017563
219 W. Keetoowah
Tahlequah, OK 74464
918-456-8603

ATTORNEYS FOR DEFENDANTS HOUSING AUTHORITY OF THE CHEROKEE NATION, THOMPSON, BUSH, CRITTENDEN, HOGNER, HEATH, ADDINGTON, AND LEWANDOWSKI

CERTIFICATE OF SERVICE

The undersigned certifies that on the 5th day of ~~June~~ July, 2000, a true and correct copy of the above and foregoing was mailed, postage prepaid, to:

James G. Wilcoxen, Esq.
Wilcoxen & Wilcoxen
P.O. Box 357
Muskogee, Oklahoma 74402-0357

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D
JUL 6 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

EARL R. HOLLIDAY,

Plaintiff,

v.

KENNETH S. APFEL, Commissioner of the Social Security Administration,

Defendant.

CASE NO. 99-CV-772-M

ENTERED ON DOCKET
DATE JUL 6 2000

JUDGMENT

Judgment is hereby entered for Plaintiff and against Defendant. Dated this 5th day of July, 2000.

Frank H. McCarthy

FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ARTHUR COMPTON,

Plaintiff,

v.

KENNETH S. APFEL, Commissioner of the Social Security Administration,

Defendant.

No. 99-CV-818-M

FILED
JUL 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ENTERED ON DOCKET
DATE JUL 5 2000

ADMINISTRATIVE CLOSING ORDER

This case was remanded to the Commissioner of Social Security under sentence six of 42 U.S.C. §405(g). In accordance with N.D. LR 41, it is hereby ordered that the Clerk administratively close this action. This case may be reopened for final determination upon application of either party once the proceedings before the Commissioner are complete.

IT IS SO ORDERED.

Dated this 5th day of July, 2000.

Frank H. McCarthy

FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE

8m
6/29/00

FILED
JUL - 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARY ELIZABETH VARNER,

Plaintiff,

vs.

JOPLIN-JOHNSTON INDUSTRIAL SUPPLY, d/b/a JOPLIN INDUSTRIAL SUPPLY, and AMERICAN AIRLINES

Defendant.

Case No.: 99CV0965E (E)

ENTERED ON DOCKET
DATE JUL 05 2000

ORDER

Upon consideration of Plaintiff, Mary Elizabeth Varner ("Varner") and Defendant, Joplin-Johnston Industrial Supply ("Johnston"), Stipulation for Dismissal With Prejudice, this Court orders that the above captioned cause be dismissed with prejudice to further litigation pertaining to all matters involved in such litigation.

Judge Ellison

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

ARTHUR COMPTON,

Plaintiff,

v.

KENNETH S. APFEL, Commissioner of the Social Security Administration,

Defendant.

ENTERED ON DOCKET
JUL 5 2000
DATE _____

Case No. 99-CV-818-M

FILED
JUL 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Upon the motion of the defendant, Commissioner of the Social Security Administration, by Stephen C. Lewis, United States Attorney of the Northern District of Oklahoma, through Cathryn McClanahan, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Commissioner for further administrative action pursuant to sentence 6 of section 205(g) and 1631(c)(3) of the Social Security Act, 42 U.S.C. 405(g) and 1383(c)(3).

DATED this 5th day of July 2000.

Frank H. McCarthy
FRANK H. McCARTHY
United States Magistrate Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D
JUL - 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

TERRY D. ROSS,

Plaintiff,

vs.

CORRECTIONAL CORP OF AMERICA; ARAMARK FOOD SERVICE; and TULSA COUNTY CRIMINAL JUSTICE AUTHORITY,

Defendants.

Case No. 00-CV-282-E (J)

ENTERED ON DOCKET
DATE JUL 05 2000

ORDER

On April 6, 2000, Plaintiff, an inmate incarcerated at the David L. Moss Criminal Justice Center and appearing *pro se*, submitted for filing a civil rights complaint pursuant to 42 U.S.C. § 1983. On April 7, 2000, Plaintiff filed his motion for leave to proceed *in forma pauperis*. By order filed April 17, 2000, the Court directed Plaintiff to submit, by May 19, 2000, an amended motion for leave to proceed *in forma pauperis* supported by the required financial documentation. Plaintiff was also advised that "[f]ailure to comply with this Order may result in the dismissal of this action without prejudice." The Court notes that the copy of the April 17, 2000 Order mailed to Plaintiff was returned, marked "NIC," and Plaintiff's address was updated in the Court's records to "address unknown."

To date, Plaintiff has neither submitted the amended motion to proceed *in forma pauperis* nor shown cause for his failure to do so as required by the Court's April 17, 2000 Order. Plaintiff has also failed to apprise the Court of any change of address. Because Plaintiff has failed to comply with the Court's Order of April 17, 2000, the Court finds that this action may not proceed and should, therefore, be dismissed without prejudice for failure to prosecute.

ACCORDINGLY, IT IS HEREBY ORDERED that Plaintiff's civil rights *Complaint* is **dismissed without prejudice** for lack of prosecution.

SO ORDERED THIS 5th day of July, 2000.

JAMES O. ELLISON, Senior Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL - 5 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

HOMEWARD BOUND, INC., et al.,)
)
Plaintiffs,)
)
v.) Case No. 85-C-437-E
)
THE HISSOM MEMORIAL CENTER, et al.,)
)
Defendants.)

ENTERED ON DOCKET
DATE JUL 05 2000

ORDER & JUDGMENT

Plaintiffs' counsel, Bullock & Bullock, filed an Attorney Fee Application on June 6, 2000, for an award of attorney fees and expenses in accordance with the December 23, 1989 order and stipulation of the parties.

The Court has reviewed the application for fees, objection and the Stipulation of the parties.

The Court hereby awards the firm Bullock & Bullock the agreed to attorney fees and expenses in the amount of $41,591.08.

IT IS THEREFORE ORDERED that the Department of Human Services, the Oklahoma Health Care Authority and the Department of Rehabilitation Services are each jointly and severally liable for the payment to plaintiffs' counsel, Bullock & Bullock, for attorney fees and expenses in the amount of $41,591.08, and a judgment in the amount of $41,591.08 is hereby granted on this day.

2001

ORDERED this 5th day of July, 2000.

HONORABLE JAMES O. ELLISON
United States District Court

Louis W. Bullock, OBA #1305
Patricia W. Bullock, OBA #9569
BULLOCK & BULLOCK
320 South Boston, Suite 718
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(918) 584-2001

- and -

Frank Laski
Judith Gran
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ATTORNEYS FOR PLAINTIFFS

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Lynn S. Rambo-Jones, OBA #4785
Deputy General Counsel
OKLAHOMA HEALTH CARE
AUTHORITY
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Oklahoma City, OK 73105
(405) 530-3439

ATTORNEYS FOR
DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILE

JUL 03 2000

Phil Lombardi, Clerk
U.S. DISTRICT COURT

BRENDA ELY,

Plaintiff,

v.

KENNETH S. APFEL,
Commissioner,
Social Security Administration,

Defendant.

Case No. 99-CV-897-EA

ENTERED ON DOCKET
DATE JUL 05 2000

RULE 58 FINAL JUDGMENT

This action has come before the Court for consideration upon an Agreed Motion to Reverse and Remand for Further Administrative Proceedings. An Order remanding the case to the Commissioner has been entered.

The Court enters this Final Judgment under Fed. R. Civ. P. 58 remanding this case to the Commissioner for further administrative action.

THUS DONE AND SIGNED on this 3rd day of July 2000.

Claire V Eagan
CLAIRE V. EAGAN
United States Magistrate Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 03 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

BRENDA ELY,

Plaintiff,

v.

KENNETH S. APFEL,
Commissioner,
Social Security Administration,

Defendant.

Case No. 99-CV-897-EA

ENTERED ON DOCKET
DATE JUL 05 2000

ORDER

Before the Court is the parties' Agreed Motion To Reverse and Remand to the Commissioner for further administrative proceedings before an Administrative Law Judge. Upon examination of the merits of this case, it is hereby ORDERED, ADJUDGED AND DECREED that this Motion be granted and this case be reversed and remanded to the Commissioner for further administrative action pursuant to sentence four of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g). *Melkonyan v. Sullivan*, 501 U.S. 89 (1991).

THUS DONE AND SIGNED on this 3rd day of July 2000.

Claire V Eagan
CLAIRE V. EAGAN
United States Magistrate Judge

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SM

FILED
JUL 3 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

DIANE SNELSON,

Plaintiff,

vs.

THE MARCUS CORPORATION,
a Wisconsin, Corporation, et al.,

Case No. 99-CV-01122-K

ENTERED ON DOCKET
JUL 03 2000
DATE

NOTICE OF DISMISSAL

COMES NOW the plaintiff, Diane Snelson, by and through her attorney, Danny K. Shadid, and hereby and, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, hereby dismisses the above-styled action. The plaintiff would show the Court that the defendants have not been served Summons in this case and that no answer, motion for summary judgement or any other type of responsive pleading has been filed in this case.

Respectfully submitted,

Danny K. Shadid, OBA #8104
DANNY K. SHADID, P.C.
Waterford Office Park
6307 Waterford Blvd., Suite 133
Oklahoma City, OK 73118
(405) 810-9999
(405) 810-9901 (Fax)
Attorney for Diane Snelson

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mail copies 12-5

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GINGER LANCE,

Plaintiff,

v.

LOWRANCE ELECTRONICS COMPANY, INC.

Defendant.

ENTERED ON DOCKET
DATE JUL 03 2000

Case No. 99-CV-228-H

FILED
JUL 03 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

JUDGMENT

This matter came before the Court on a Motion for Summary Judgment by Defendant. The Court duly considered the issues and rendered a decision in accordance with the order filed on May 5, 2000.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Defendant and against Plaintiff.

IT IS SO ORDERED.

This 3RD day of ~~June~~ July 2000.

Sven Erik Holmes
United States District Judge

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3M
-6126100

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CASE NO. 00CV0373H(M)**
	)	
ALZORA L. ETTER,	)	
	)	
Defendant.	)	

FILED
JUL 03 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.

2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.

3. The defendant hereby agrees to the entry of Judgment in the principal sum of $3,641.61, plus accrued interest of $1,191.53 , plus administrative costs in the amount of $31.41, plus interest thereafter at the rate of 8% per annum until judgment, plus filing fees in the amount of $150.00, plus interest thereafter at the legal rate _____ until paid, plus costs of this action, until paid in full.

4. In addition to the regular monthly payment, the defendant hereby agrees to the submission of this debt to the Department of Treasury for inclusion in the Treasury Offset Program. Under this program, any federal payment the defendant would normally receive may be offset and applied to this debt.

5. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation of the defendant that

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Alzora L. Etter will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 1st day of August, 2000, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of $125.00, and a like sum on or before the 1st day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Financial Litigation Unit, 333 West 4th Street, Suite 3460, Tulsa, Oklahoma 74103-3809.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

(d) The defendant shall keep the United States currently informed in writing of any material change in his/her financial situation or ability to pay, and of any change in his/her employment, place of residence or telephone number. Defendant shall provide such information to the United States Attorney at the address set forth above.

(e) The defendant shall provide the United States with current, accurate evidence of his/her assets, income and expenditures (including, but not limited to his/her Federal income tax returns) within fifteen (15) days for the date of a request for such evidence by the United States Attorney.

6. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

7. The parties further agree that any Order of Payment which may be entered by the Court pursuant hereto may thereafter be modified and amended upon stipulation of the parties; or, should the parties fail to agree

upon the terms of a new stipulated Order of Payment, the Court may, after examination of the defendant, enter a supplemental Order of Payment.

8. The defendant has the right of prepayment of this debt without penalty.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, Alzora L. Etter, in the principal amount of $3,641.61, plus accrued interest in the amount of $1,191.53, plus interest at the rate of 8 until judgment, plus filing fees in the amount of $150.00, plus interest thereafter at the current legal rate of _____ percent per annum until paid, plus the costs of this action.

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

Stephen C. Lewis
United States Attorney

PHIL PINNELL, OBA #7169
Assistant United States Attorney

ALZORA L. ETTER

PEP/llf

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 03 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ROBERT OSLIN,

Plaintiff,

vs.

KENNETH S. APFEL, Commissioner of the Social Security Administration,

Defendant.

Case No. 99-CV-976-J

ENTERED ON DOCKET
DATE JUL 3 2000

ADMINISTRATIVE CLOSING ORDER

Pursuant to N.D. LR 41.0, the Court Clerk is directed to administratively close this case. At the request of the parties, the Court has remanded this case for further administrative action pursuant to sentence 6 of 42 U.S.C. § 405(g). The case may be reopened by either party once Defendant has completed its additional administrative action.

IT IS SO ORDERED.

Dated this 3 day of July 2000.

Sam A. Joyner
United States Magistrate Judge

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 03 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ROBERT OSLIN,

Plaintiff,

v.

KENNETH S. APFEL, Commissioner of the Social Security Administration,

Defendant.

Case No. 99-CV-976-J

ENTERED ON DOCKET
DATE JUL 3 2000

ORDER

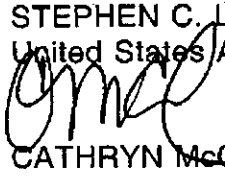
Upon the motion of the defendant, Commissioner of the Social Security Administration, by Stephen C. Lewis, United States Attorney of the Northern District of Oklahoma, through Cathryn McClanahan, Assistant United States Attorney, and for good cause shown, it is hereby ORDERED that this case be remanded to the Commissioner for further administrative action pursuant to sentence 6 of section 205(g) and 1631(c)(3) of the Social Security Act, 42 U.S.C. 405(g) and 1383(c)(3).

DATED this 3 day of ~~June~~ July 2000.

SAM A. JOYNER
United States Magistrate Judge

SUBMITTED BY:

STEPHEN C. LEWIS
United States Attorney



CATHRYN McCLANAHAN, OBA #14853
Assistant United States Attorney
333 West 4th Street, Suite 3460
Tulsa, Oklahoma 74103-3809

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 03 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

LESTER U. LYONS,
SSN: 444-54-4945

Plaintiff,

v.

KENNETH S. APFEL, Commissioner of Social Security Administration,

Defendant.

No. 99-CV-488-J

ENTERED ON DOCKET
DATE JUL 3 2000

JUDGMENT

This action has come before the Court for consideration, and an Order affirming the Commissioner's denial of benefits to Plaintiff has been entered. Judgment for the Defendant and against the Plaintiff is hereby entered pursuant to the Court's Order.

It is so ordered this 3th day of July 2000.

Sam A. Joyner
United States Magistrate Judge

SM
7-28-00

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE JUL 03 2000

THOMAS W. KING,)
)
Plaintiff,)
)
v.) Case No. 99-CV-0721H (J)
)
HILTI, INC.,)
)
Defendant)

FILED
JUL 03 2000
Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER
on Summary Judgment Motions

This matter came before the Court on Defendant's Motion for Summary Judgment on all issues and Plaintiff's Motion for Summary Judgment on the fraud counterclaim. Having reviewed in detail the record presented, the briefs of the parties, and arguments of counsel, the Court finds that there are no issues of material fact and therefore grants the Defendant's Motion in all respects and denies the Plaintiff's Motion for Summary Judgment.

I. The ADEA Claim.

This Age Discrimination in Employment Act ("ADEA") claim was analyzed in light of the Reeves v. Sanderson Plumbing Co., Case No 99-536, decided June 12, 2000 by the United States Supreme Court. Applying the Reeves holding to the present case, the Court finds that the inquiry is limited to the stated reason for the discharge. In this case this is no evidence of pretext. The stated reasons for the termination are entirely credible and uncontroverted. There is no evidence of pretext.

Summary judgment is therefore granted in favor of the defendant on the ADEA claim.

II. The Intentional Infliction of Emotional Distress Claim.

Plaintiff contends that his termination and allegedly being escorted from the building constitutes intentional infliction of emotional distress. The Court finds that under the standards articulated in Eddy v. Brown, 1986 OK 3, 715 P.2d 74 (1986), escorting a properly terminated employee from the building does not constitute outrageous behavior. Indeed, there are a number of security reasons for dealing with a terminated employee in the manner alleged by Plaintiff. The Court finds that Mr. King was terminated for legitimate reasons and not as a pretext for some form of discrimination. Therefore, Mr. King was subject to appropriate security measures.

There is no dispute concerning the material facts. Summary judgment is therefore entered in favor of Defendant and against Plaintiff on the emotional distress claim.

III. The Fraud Claim.

The Defendant moved for summary judgment on its fraud counterclaim. Plaintiff also moved for summary judgment on the issue of fraud. The material facts are not in dispute. Plaintiff submitted a request for reimbursement of $21,600, which he represented that he paid to a real estate agent. The Court finds that it is undisputed that Mr. King paid only $7,200 to the realtor and directed that $14,400 be channeled to his wife.

King argued that Hilti's fraud claim was barred because it could have called the real estate agent and discovered the falsity of his representation. The Court finds this argument to be bizarre, contrary to business practice, and inconsistent with business

procedures. Most importantly, the elements of fraud are present. King made a false statement or material omission that was relied upon by Hilti. As a result, Hilti paid King $14,400 more than he was entitled to receive. Judgment will be entered in favor of Hilti and against King for the principal amount of $14,400.

IV. The Contract Claim.

The Court finds that Defendant's motion for summary judgment should be entered on the contract claim. The undisputed facts demonstrate that King did not comply with the requirements for receiving the bonus.

Judgment will be entered in accordance with the foregoing.

Sven Erik Holmes
United Stated District Judge

APPROVED AS TO FORM:

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